IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:
Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Munib Akhtar
Mr. Justice Jamal Khan Mandokhail

SUO MOTO CASE NO.1 OF 2022
(Re: ruling by the Deputy Speaker of the National Assembly under Article 5 of the Constitution qua voting on No-confidence Motion against the Prime Minister of Pakistan)

Constitution Petition Nos.3 to 7 of 2022
(Re: ruling passed on 03.04.2022 by the Deputy Speaker of the National Assembly on No-confidence Motion)

Pakistan Peoples Party Parliamentarians (PPPP) through its Secretary General Mr. Farhatullah Babar and others **...Petitioner(s)**
(in Const. P.3/2022)

Supreme Court Bar Association of Pakistan through its President, Islamabad
(in Const. P.4/2022)

Pakistan Muslim League-N through its representative Malik Ahmed Khan
(in Const. P.5/2022)

Sindh High Court Bar Association through its Hon. Secretary, Karachi
(in Const. P.6/2022)

Sindh Bar Council through its Secretary, High Court Building, Karachi
(in Const. P.7/2022)

Versus

Federation of Pakistan through Secretary M/o Law and Justice Islamabad and others **...Respondent(s)**
(in Const. P. 3/2022)

President of Pakistan through Secretary to the President, Islamabad and others
(in Const. P. 4/2022)

Deputy Speaker of the Provincial Assembly of the Punjab and others
(in Const. P. 5/2022)

Federation of Pakistan through the
Secretary, Islamabad and others
(in Const.P.6/2022)

Federation of Pakistan through the
Secretary, Islamabad and others
(in Const. P. 7/2022)

For Federation	:	Mr. Khalid Javed Khan, Attorney General for Pakistan Mr. Sohail Mehmood, Addl. AGP Assisted by: Mr. M. Usman Piracha, Adv, Ms. Mayam Rasheed, Adv. Ms.Faryal Shah Afridi, Adv.
For the President	:	S. Ali Zafar, ASC S. M. Ali Bokhari, ASC Mr. Ahmed Nawaz Ch. AOR
For Prime Minister	:	Mr. Imtiaz Rasheed Siddiqui, ASC Mr. Faisal Fareed, ASC S. Hasnain Ibrahim Kazmi, ASC Assisted by Ch. Atif Khan, Advocate
For ECP	:	Mr. Sikandar Sultan Raja, CEC Mr. Omer Hameed Khan, Secretary Mr. Zafar Iqbal, Spl. Secretary Mr. Muhammad Arshad, DG (L) Mr. Khurram Shahzad, ADG(L)
For SCBA	:	**(SMC 1 & Const.P.4/22)** Mr. Mansoor Usman Awan, ASC Mr. Ahsan Bhoon, ASC (President) Mr. Waseem Mumtaz Malik, ASC (Secretary) Mr. Khawar Ikram Bhatti, ASC S. Rifaqat Hussain Shah, AOR Assisted by: Mr. Umair Ahmed, Adv. Asfand Yar Khan, Adv.
For PPPP	:	**(SMC 1 & Const.P.3/22)** Mr. Farooq H. Naek, Sr. ASC Mr. Bilawal Bhutto Zardari Mian Raza Rabbani, ASC Raja Shafqat Abbasi, ASC Sardar M. Latif Khan Khosa, Sr. ASC Sardar Shahbaz Ali Khan Khosa, ASC S. Rifaqat Hussain Shah, AOR Assisted by: Barrister Shiraz Shaukat Rajpar

For BNP (M)	:	Mr. Mustafa Ramday, ASC Mr. Rashid Hafeez, ASC Assisted by: Mr. Ahmed Javaid, Advocate Mr. Akbar Khan, Advocate Ms. Zoe Khan, Adv.
For ANP	:	Mr. Babar Yousafzai, ASC Mr. M. Sharif Janjua, AOR
For PML(N)	:	**(SMC 1/2022)** Mr. Makhdoom Ali Khan, Sr. ASC Mian Shahbaz Sharif (Opposition Leader) Assisted by: Mr. Saad M. Hashmi, Adv. Mr. Sarmad Hani, Adv. Mr. Yawar Mukhtar, Adv. Mr. Ammar Cheema, Adv. **(Const. P. 5/2022)** Ch. Sultan Mehmood, ASC Mr. Khalid Ishaq, ASC Mr. Azam Nazeer Tarar, ASC S. Rifaqat Hussain Shah, AOR
For PML	:	Mr. Imtiaz Rasheed Siddiqui, ASC S. Hasnain Ibrahim Kazmi, ASC Mr. Ahmed Nawaz Ch. AOR
For PTI	:	Dr. Babar Awan, Sr. ASC Mr. Azhar Siddiqui, ASC Mr. Ahmed Nawaz Ch. AOR
For JUP	:	Mr. Kamran Murtaza, Sr. ASC Qari Abdul Rasheed, ASC
For Dy. Speaker, NA	:	Mr. Naeem Bokhari, ASC Mr. Anis M. Shahzad, AOR
	:	
For Sindh	:	Mr. Salman Talibuddin, AG (V.L. Karachi) Mr. Sibtain Mehmood, Addl. AG (V.L. Karachi) Mr. Fawzi Zafar, Addl. AG (V.L. Karachi)
For Punjab	:	Mr. Ahmed Awais, AG Punjab
For Balochistan	:	Mr. Asif Reki, AG Mr. M. Ayaz Sawati, Addl. AG
For KP	:	Mr. Shumial Butt, AG

		Mian Shafaqat Jan, Addl. AG Mr. Atif Ali Khan, Addl. AG
For ICT	:	Mr. Niazullah Khan Niazi, AG
For M/o Interior	:	Mr. M. Ayub, Addl. Secretary Mr. M. Naeem Saleem, Dy. Secretary
For NA	:	Mr. Abdul Latif Yousafzai, ASC Mr. M. Mushtaq, Addl. Secretary Mr. Haq Nawaz, SO
For SHCBA & SBC	:	**Const.P. 6 & 7/2022** Mr. Salahuddin Ahmed, ASC Mr. Haider Imam Rizvi, ASC Mr. Anis Muhammad Shahzad, AOR
Date of Hearing:		04.04.2022; 05.04.2022; 06.04.2022; 07.04.2022

J U D G M E N T

UMAR ATA BANDIAL, CJ:

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Surah Ash-Shu'araa, Verse 83-84:
"O my Sustainer! Endow me with the ability to judge [between right and wrong], and make me one with the righteous, and grant me the power to convey the truth unto those who will come after me..."
(Translation by Muhammad Asad)

The present *suo motu* proceedings were initiated on 03.04.2022 pursuant to the recommendations of 12 learned Judges of this Court in a meeting held that afternoon at the residence of the Chief Justice of Pakistan. The proceedings took notice of the events that transpired in the National Assembly (**"NA"**) earlier in the day. The Orders of the Day for 03.04.2022 issued by the NA Secretariat listed voting on the resolution of no confidence (**"RNC"**) against Prime Minister Mr. Imran Khan (**"PM"**) at agenda item 4. However, as will become clear later, the scheduled voting did not take place. Instead, the RNC was

dismissed by the Deputy Speaker on a point of order raised by the Law Minister, Mr. Fawad Chaudhry, shortly after the House had convened. Within a few hours thereafter the NA was dissolved by the President of Pakistan on the advice of the PM.

Factual Background

2. The chain of events leading up to the sitting of the NA on 03.04.2022 for voting on the RNC commenced on 08.03.2022. On the latter day 102 MNAs belonging to the Opposition Parties submitted a requisition under Article 54(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**"Constitution"**) for summoning a meeting of the NA. For clarity, this provision is produced below:

> "**54. Summoning and prorogation of Majlis-e-Shoora (Parliament).**
> ...
> (3) On a requisition signed by not less than one-fourth of the total membership of the National Assembly, the Speaker shall summon the National Assembly to meet, at such time and place as he thinks fit, within fourteen days of the receipt of the requisition; and when the Speaker has summoned the Assembly only he may prorogue it."
>
> (*emphasis supplied*)

The total membership of the NA is 342. One-fourth of such membership equals 86. The requisition, therefore, met the qualification laid down in Article 54(3). Alongside the requisition, on 08.03.2022 142 MNAs of the Opposition Parties also filed a notice for moving a RNC against the PM. Article 95 of the Constitution prescribes the thresholds for an RNC to be moved and ultimately be passed in the following manner:

> "**95. Vote of no-confidence against Prime Minister.** (1) A resolution for a vote of no-

> confidence moved by not less than twenty per centum of the total membership of the National Assembly may be passed against the Prime Minister by the National Assembly.
>
> (2) A resolution referred to in clause (1) shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the National Assembly.
>
> (3) A resolution referred to in clause (1) shall not be moved in the National Assembly while the National Assembly is considering demands for grants submitted to it in the Annual Budget Statement.
>
> (4) If the resolution referred to in clause (1) is passed by a majority of the total membership of the National Assembly, the Prime Minister shall cease to hold office."
>
> (*emphasis supplied*)

3. The necessary steps for initiating, moving and voting on an RNC in the NA are provided in the Rules of Procedure and Conduct of Business in the National Assembly, 2007 (**"NA Procedure Rules"**). These Rules, divided into Chapters, govern the general conduct of business in the NA. Rule 37 framed consistently with the requirements of Article 95 of the Constitution regulates specifically the procedure of an RNC. The provisions of Rule 37 are produced below:

> "37. **Resolution for vote of no-confidence against the Prime Minister.-** (1) A notice of a resolution under clause (1) of Article 95 shall be given in writing by not less than twenty per centum of the total membership of the Assembly.
>
> (2) The Secretary shall, as soon as may be, circulate the notice to the members.
>
> (3) A notice under sub-rule (1) shall be entered in the name of the members concerned in the Orders of the Day for the first working day after the expiry of one clear day of receipt of the notice.

> (4) Leave, to move the resolution, shall be asked for after questions, if any, and before other business entered in the Orders of the Day is taken up.
>
> (5) When the resolution is moved, the Speaker may, after considering the state of business, allot a day or days for the discussion on the motion:
>
> Provided that the resolution shall not be moved while the Assembly is considering demands for grants submitted to it in the Annual Budget Statement.
>
> (6) The resolution shall not be voted upon before the expiry of three days, or later than seven days, from the day on which the resolution is moved in the Assembly.
>
> (7) The provisions of the Second Schedule shall apply *mutatis mutandis* to voting on a resolution under this rule.
>
> (8) The Assembly shall not be prorogued until the motion is disposed of or, if leave is granted, the resolution has been voted upon."
>
> (*emphasis supplied*)

It may be noted that to initiate an RNC a written notice, signed by at least 20% of the total membership of the NA, has to be filed in the NA Secretariat. Thereafter, to move the RNC leave must be granted by 20% of the total membership of the NA and subsequently for the RNC to succeed in removing a Prime Minister, a majority of the total membership of the NA must vote in favour of the resolution. As the NA was not in session when the notice for the RNC was submitted on 08.03.2022, therefore, on the same day the members of the NA filed a requisition to summon the NA under Article 54(3) of the Constitution. The receipt of this requisition by the Speaker triggered the period of 14 days in which he had to summon the NA. This period expired on 22.03.2022. Nevertheless, the

session of the NA was called on 25.03.2022 by the NA Secretariat vide Notification dated 20.03.2022. Some emphasis was laid by the Opposition Parties on the delay occasioned in summoning the session of the NA beyond the stipulated period. While this objection shall be dealt with later, for present purposes it is sufficient to note that the Notification of 20.03.2022 gave an explanation for the delay of 3 days in summoning the session of the NA. The relevant portions from the Notification are produced below:

> "**NATIONAL ASSEMBLY SECRETARIAT**
> **Islamabad, the 20th March, 2022**
> **NOTIFICATION**
>
> **No.F.1(2)/2022-Legis.-**...
> 2. WHEREAS ON 21st January, 2022, a motion was adopted by the National Assembly to allow the exclusive use of Chamber of the National Assembly for the 48th Session of the Organization of Islamic Countries (OIC) Council of Foreign Ministers scheduled on 22nd-23rd March, 2022 or any other date.
>
> ...
>
> 4. WHEREAS, after receipt of requisition on 8th March, 2022 the National Assembly Secretariat requested the Senate Secretariat to provide Chamber of the Senate for holding of the National Assembly Session. The Senate Secretariat informed that the Senate Chamber is also not available being under renovation.
>
> 5. Thereafter the Chairman CDA and Deputy Commissioner, Islamabad were also approached... They have informed in writing that no suitable place is available at present in Islamabad for holding the session of the National Assembly."
>
> ...
>
> 7. ...Therefore, in exercise of the powers conferred by clause (3) of Article 54 of the Constitution... the Hon'ble Speaker has been pleased to summon the National Assembly to meet in the Parliament House, Islamabad on the first available date i.e. **Friday, the 25th March, 2022 at 11.00 a.m.**"
>
> (*emphasis supplied*)

4. As intimated by the aforesaid Notification, the meeting of the NA was held on 25.03.2022 but it was adjourned to 28.03.2022 after offering Fateha for a deceased Member of the NA. However, before the NA could meet on the next scheduled date, a crucial political development took place on 27.03.2022. On that date the PM, whilst addressing a large public rally in Islamabad, referred to a secret coded message (**"cypher"**), received from Pakistan's Ambassador posted at a foreign capital. Allegedly the cypher revealed that a foreign State was supporting a regime change in Pakistan by ousting the PM through the success of the RNC. This cypher was said to have been issued by the Pakistan Embassy abroad on 07.03.2022 (a day before the notice of the RNC against the PM was filed in the NA Secretariat). In his speech at the public rally the PM claimed that the cypher was proof that a plot had been hatched by a foreign power to topple his Government. That he had been aware of it for some months, and that certain persons in Pakistan were a part of this scheme. He did not name these persons.

5. However, on 28.03.2022 when the sitting of the NA resumed for, *inter alia*, leave to move the RNC no member from the Treasury benches questioned the implications of the cypher. Nor leveled any allegation against the members of the Opposition Parties for conspiring against the PM. Therefore, as per the agenda set out in the Orders of the Day for 28.03.2022, the proceedings swiftly advanced to the then Leader of the Opposition, Mr. Shahbaz Sharif, seeking leave of the NA to move the RNC against the PM in terms of Rule 37(4) of the NA

Procedure Rules. In accordance with the said Rule leave was granted by 161 members of NA. Further, as per the mandate of Article 95(2) of the Constitution, explained in Rule 37(5) of the NA Procedure Rules, the Deputy Speaker allocated 31.03.2022 as the day for holding a discussion on the RNC.

6. On 31.03.2022, when the RNC came up for discussion before the NA, again no member from the Treasury either raised the subject of the cypher or linked it to the RNC moved against the PM. Instead, the sitting was adjourned to 03.04.2022. This is notwithstanding that in a public rally on 27.03.2022 the PM had construed the cypher to reveal support and active interest of a foreign State in the ouster of his Government through the RNC.

7. In contrast to the inactivity in the NA in this regard, two national security bodies met the same day on 31.03.2022 to discuss and decide the effect and implications of the contents of the cypher. This included the meeting of the Parliamentary Committee on National Security (**"PCNS"**) at Parliament House, Committee Room No.2. Members of the Opposition Parties were invited to this meeting, scheduled shortly after the start of the NA sitting for discussion on the RNC, but they did not attend the same. The PCNS was briefed about the contents of the cypher; however, no concrete action was taken by the Committee and only a ceremonial condemnation was issued for the 'undiplomatic and uncalled' language used in the cypher. Nevertheless, a more important meeting of the National Security Committee (**"NSC"**) was also

held at the Prime Minister House earlier in the day. It was attended, *inter alia*, by the PM, related Ministers and the four heads of the Services. A summary of the discussions that took place in the NSC meeting was released by the Prime Minister's Office (**"PMO"**) on the same day. For reference, the relevant passages from the PMO's statement are produced below:

> "**Prime Minister's Office**
>
> Prime Minister @ImranKhanPTI chaired the 37th meeting of the National Security Committee (NSC) today at Prime Minister's House.
>
> The meeting was attended by Federal Ministers of Defence, Energy, Information & Broadcasting, Interior, Finance, Human Rights, Planning, Development & Special Initiatives, Chairman Joint Chiefs of Staff Committee, Services Chiefs, National Security Adviser and senior officers.
>
> ...
>
> The Committee expressed grave concern at the communication, terming the language used by the foreign official as undiplomatic.
>
> The Committee concluded that the communication amounted to blatant interference in the internal affairs of Pakistan by the country in question, which was unacceptable under any circumstances.
>
> The Committee decided that Pakistan will issue a strong demarche to the country in question both in Islamabad and in the country's capital through proper channel in keeping with diplomatic norms."
>
> (*emphasis supplied*)

8. The PMO's statement shows four important points:

i. The NSC unanimously agreed that the communication recorded in the cypher tantamounted to foreign interference in the internal affairs of Pakistan;

ii. The NSC concluded that the appropriate response to the undiplomatic posture adopted by a foreign diplomat before Pakistan's Ambassador, as reported in the cypher, was to issue a demarche to the concerned foreign State in accordance with diplomatic norms;

iii. No observation was made to the effect that the RNC was moved by the Opposition Parties or by persons in Pakistan in conspiracy with a foreign State; and

iv. No inquiry/investigation was ordered into the matter to ascertain the nature or extent of involvement of any person in Pakistan for seeking or receiving the support of a foreign State to move the RNC.

The reservation on the part of the NSC to recommend stronger measures against the alleged foreign conspiracy probably reflects the inadequacy of the material for taking more assertive action. This perhaps also explains the lackluster response by the PCNS and the members of the Treasury in their respective meeting and sitting of 31.03.2022.

9. The Orders of the Day for 03.04.2022, issued by the NA Secretariat, reflect that voting on the RNC was scheduled to take place at agenda item 4 on that day. However, as soon as the sitting of the NA commenced on 03.04.2022, the Deputy Speaker allowed the Federal Law Minister to speak on a point of order, before any business listed in agenda items 2-3 of the Orders of the Day was dealt with. It was then that the Law Minister for the first time raised before the NA the issue of the RNC being moved to achieve a regime change at the behest of

a foreign government. His speech is reproduced below to facilitate reference:

> "وزیر برائے اطلاعات و نشریات، قانون و انصاف (جناب فواد احمد): جناب سپیکر! تحریک عدم اعتماد آئین کے Article 95 کے تحت پیش کی جاتی ہے۔ عمومی حالات میں یہ ایک جمہوری حق ہے اور اس حق کو تسلیم کیا جانا چاہئیے۔ لیکن جناب سپیکر! ہمارے آئین کا ایک اور Article 5(1) ہے۔
> Clause(1) of Article 5 reads as follows- Loyalty to the State is the basic duty of every citizen.
> اب یہاں کیا ہوتا ہے 7 مارچ کو ہمارے ایک سفیر صاحب کو ایک official meeting میں طلب کیا جاتا ہے، attend کرتے ہیں۔ باقاعدہ Note taker کے ساتھ attend کرتے ہیں۔ یہ ملاقات آفیشل ہے اور اس میں دوسرے ملک کے officials بھی بیٹھتے ہیں۔ اس meeting کی تاریخ کیا ہے 7 مارچ۔ اس میٹنگ میں ہمارے سفیر کو بتایا جاتا ہے کہ عمران خان کے خلاف ایک عدم اعتماد پیش کی جا رہی ہے۔ جناب سپیکر! 7 مارچ کو یہ بتایا جاتا ہے عدم اعتماد اس وقت تک پاکستان میں نہیں آتی، 8 مارچ کو آتی ہے اس وقت تک پاکستان میں بھی کسی کو نہیں پتہ عدم اعتماد آنی ہے۔
> جناب سپیکر! ہمیں بتایا جاتا ہے، ہمارے سفیر صاحب کو بتایا جاتا ہے کہ پاکستان سے یعنی آپ کے اور ہمارے تعلقات کا دار و مدار اس عدم اعتماد کی کامیابی پر ہے اور اگر یہ عدم اعتماد کامیاب ہوتی ہے تو you will be forgiven لیکن اگر عدم اعتماد کامیاب نہیں ہوتی تو آپ کا اگلا راستہ بہت سخت ہو گا۔
> جناب سپیکر! یہ regime change by a foreign government کا ایک effective operation ہے اور جناب سپیکر !بد قسمتی سے اس کے ساتھ ہی ہمارے کچھ اتحادیوں کا اور ہمارے اپنے 22 لوگوں کا ضمیر جاگ جاتا ہے ماشا اللہ اور معاملات یہاں تک آ پہنچتے ہیں۔ یہ فیصلہ عدم اعتماد کا نہیں ہے آرٹیکل 5 کا ہے۔
> سپیکر صاحب! کیا 22 کروڑ لوگوں کی یہ ریاست اتنی نحیف و نزار ہے کہ باہر کی طاقتیں یہاں پر بیٹھ کر حکومتیں بدل دیں؟ میری آپ سے درخواست ہے کہ پہلے ہمیں یہ بتایا جائے کہ کیا بیرونی ملک کی مدد سے پاکستان میں regime change کی جا سکتی ہے؟ کیا یہ آئین کے آرٹیکل 5 کی خلاف ورزی ہے یا نہیں ہے؟ کیا پاکستان کی عوام کٹھ پتلیاں ہیں؟ کیا ہم پاکستانیوں کی کوئی حیثیت نہیں ہے؟ کیا ہم غلام ہیں یا لیڈر آف اپوزیشن کے بقول ہم beggars ہیں؟ فقیر ہیں؟
> جناب سپیکر! اگر ہم غیرت مند قوم ہیں تو یہ تماشا نہیں چل سکتا۔ میں صرف یہ کہوں گا کہ
> ہم پر جو گزری سو گزر مگر اے شب ہجراں
> میرے اشک تیری عاقبت سنوار چلے
> سپیکر صاحب! اس کے اوپر Ruling آنی چاہیے کہ یہ آرٹیکل 5 کے متصادم ہے یا نہیں ہے؟ پہلے آپ اس کی constitutionality طے کریں پھر آگے بڑھیں۔"

10. In essence the Law Minister's allegation was that the movers of the RNC had succumbed to the influence of a foreign State to remove the incumbent Government. Therefore, the RNC was tainted by its breach of Article 5 of the Constitution which mandates that:

> "**5. Loyalty to State and obedience to Constitution and law.** (1) Loyalty to the State is the basic duty of every citizen.

> (2) Obedience to the Constitution and law is the [inviolable] obligation of every citizen wherever he may be and of every other person for the time being within Pakistan."

11. No sooner had the Law Minister's speech ended that the Deputy Speaker announced his ruling on the former's point of order. He accepted the allegations levelled by the Law Minister and dismissed the RNC for being unconstitutional. He also prorogued the NA. The members of the Opposition Parties present in the NA who had been accused by the Law Minister, being the movers and supporters of the RNC, were not granted an opportunity to respond or rebut the allegations levelled against them. For reference, the ruling by the Deputy Speaker is produced hereinbelow:

> "جناب ڈپٹی سپیکر: وزیر اعظم پاکستان کے خلاف اپوزیشن نے عدم اعتماد کی تحریک 8 مارچ، 2022 کو پیش کی تھی۔ عدم اعتماد کی تحریک کا آئین، قانون اور رولز کے مطابق ہونا ضروری ہے۔ کسی غیر ملکی طاقت کو یہ حق نہیں ہے کہ وہ سازش کے تحت پاکستان کے عوام کی منتخب کردہ حکومت کو گرائے۔ وزیر قانون نے جو نکات اٹھائے ہیں وہ درست ہیں، valid ہیں۔ لہذا میں Ruling دیتا ہوں کہ عدم اعتماد کی قرار داد آئین اور قومی خود مختاری و آزادی کے منافی ہے اور رولز اور ضابطے کے خلاف ہے۔ میں یہ قرار داد مسترد ، disallow کرنے کی Ruling دیتا ہوں۔ ایوان کی کارروائی prorogue کی جاتی ہے۔
> جناب ڈپٹی سپیکر: فرمان: میں ُاسلامی جمہوریہ پاکستان کے دستور کے آرٹیکل 54 کی شق (3) کے تحت تفویض کردہ اختیارات کو بروئے کار لاتے ہوئے قومی اسمبلی کا جمعہ 25 مارچ، 2022 کو طلب کردہ اجلاس اس کے کام کے اختتام پر بذریعہ ہذا برخاست کرتا ہوں۔"

12. Later in the day, detailed reasons for the ruling were also issued by the Deputy Speaker with which the Speaker concurred. This elaborative ruling dwelt upon the foreign intervention to oust the PM. It cited information (not described in or annexed to the ruling or the reasons) which was said to support the claim made by the Law Minister and earlier by the PM in the public rally of 27.03.2022: that a regime

change was being brought about in Pakistan by some members of the Opposition Parties in complicity with a foreign State. Relevant extracts from the detailed reasons are produced below:

> 1. [Point of Order raised by the Law Minister elaborated].
>
> 2. [Details of the notices filed in the NA Secretariat on 08.03.2022 for requisitioning the Assembly and moving the RNC against the PM provided].
>
> 3. [Particulars of the sittings of 25.03.2022, 28.03.2022 and 31.03.2022 set out].
>
> "4. ...The gist of the contents of the cypher indicated that the foreign state was interfering in the internal affairs of Pakistan and Prime Minister Imran Khan was its primary target. The circumstance shows that there was nexus between no confidence motion against Prime Minister and the foreign intervention and the activities of that State's representatives deputed to Pakistan...
>
> 5. ...[A]s Speaker and custodian of the National Assembly, I asked the concerned functionaries of the Government to provide me the relevant facts and information subject to the applicable laws. This was accordingly done. The facts reve[a]led to me were absolutely shocking and completely unacceptable for any independent people with self respect and dignity. I was fully convinced that there was blatant foreign interference in the internal affairs of Pakistan and the duly elected Prime Minister of Pakistan was the prime target. Wh[at] was even more shocking was the apparently close nexus and proximity between blatant foreign interference and the motion of no confidence against the Prime Minister also became evident.
>
> ...
>
> 7. ...it is now clear that there has been blatant foreign interference in the internal affairs of Pakistan and there exists a close nexus between such foreign interference and the campaign to oust and remove the democratically elected government headed by Prime Minister Imran Khan through different

> means including the motion for no-confidence initiated on 8-3-2022...
>
> 8. The membership of this august House is a matter of great honour and trust for every member. Any action though purported to be under the Constitution and the Rules but for extraneous purposes and goals which would compromise the sovereignty and independence of the country could not be sustained under any circumstances...
>
> 9. The motion of no confidence against the Prime Minister is apparently linked with and has clear nexus with the efforts of the foreign State to bring about change of Government [but the RNC] cannot be entertained or allowed to be voted upon in this august House and must be rejected empathetically as this could [n]ever be the intent of the Constitution...
>
> 10. I, as the Deputy Speaker and custodian of the House... cannot remain indifferent or act as unconcerned spectator let alone be instrumental in this unconstitutional act of change of Government and /or Prime Minister orchestrated by a foreign state. The present motion of no confidence being the very essence of the internal proceedings of the House cannot be entertained or allowed by me to proceed in these circumstances and has to be disallowed and accordingly rejected."
>
> (*emphasis supplied*)

13. During the pendency of the RNC the PM was precluded from advising the President to dissolve the NA because of the bar imposed by the Explanation to Article 58(1) of the Constitution. However, as a result of the ruling of the Deputy Speaker the PM became competent to give such advice. He accordingly tendered the same to the President. For reference Article 58(1) is produced below:

> "**58. Dissolution of the National Assembly.** (1) The President shall dissolve the National Assembly if so advised by the Prime Minister; and the National Assembly shall, unless sooner dissolved, stand dissolved at the

> expiration of forty-eight hours after the Prime Minister has so advised.
>
> *Explanation*.- Reference in this Article to "Prime Minister" shall not be construed to include reference to a Prime Minister against whom a notice of a resolution for a vote of no-confidence has been given in the National Assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or after the dissolution of the National Assembly."

This advice was duly accepted by the President who forthwith passed an order for the dissolution of the NA. In a matter of few hours on 03.04.2022, the country was left without two functioning constitutional organs of the State, namely, the elected Legislature (NA) and the elected officers of the Executive (the Federal Government).

Suo Motu Notice by the Supreme Court

14. It was in these extraordinary circumstances that the Court being cognisant of its duty to protect and to uphold the Constitution took *suo motu* notice of the matter in the afternoon of 03.04.2022. The Court was moved into action by the acts of the Deputy Speaker which *prima facie* breached his constitutional duty and mandate to put the RNC to vote before the NA under Article 95(2) of the Constitution. This controversial action triggered a chain of events mentioned in the preceding paragraphs. The most concerning aspect of the Deputy Speaker's ruling is that it allowed the PM to claim the constitutionally repugnant outcome of avoiding the RNC without a vote by the NA. The Court, therefore, acted on 03.04.2022 with the sole purpose of preserving constitutional

order in the country. Accordingly, notices were issued to the concerned and aggrieved parties, including the learned Attorney General, the mainstream political parties, Federal Secretary Interior and Secretary Defence, Supreme Court Bar Association (**"SCBA"**) and Pakistan Bar Council. Interim directions were also issued for the maintenance of peace and public order:

> "5. ...Accordingly, all the political parties involved in the process of the no confidence motion in the National Assembly and other political forces are directed to observe the law and maintain peace and public order. No state functionaries or bodies shall take any extraconstitutional measure and shall act strictly in accordance with Constitution and the law as guided by the principles laid down by this Court in the case of **Sindh High Court Bar Association vs. Federation of Pakistan** (PLD 2009 SC 879). Any order passed by the Prime Minister and the President shall be subject to the order of this Court."
>
> (*emphasis supplied*)

15. When the matter came up for hearing the next day on 04.04.2022 we were informed that the Pakistan Peoples Party Parliamentarians (**"PPPP"**), Pakistan Muslim League-Nawaz (**"PML-N"**), the SCBA, the Sindh High Court Bar Association (**"SHCBA"**) and the Sindh Bar Council (**"SBC"**) had also filed Constitution Petitions challenging the actions of the Deputy Speaker, PM and President. Owing to the urgency of the matter and the precariousness of the situation, arguments in the case were heard at length for four consecutive days. During this period the learned counsel for the parties presented their detailed submissions. Those appearing for the Opposition Parties and the SCBA supported a vote on the RNC whereas the

learned Attorney General, learned counsel for PTI, Deputy Speaker, PM and President (**"Respondents"**) supported the dissolution of NA.

Submissions of Counsel

16. The Respondents were represented by the learned Attorney General (for the Federal Government), Mr. Ali Zafar, ASC (for the President of Pakistan), Mr. Imtiaz Rasheed Siddiqui, ASC (for the PM), Mr. Naeem Bokhari, ASC (for the Deputy Speaker) and Dr. Babar Awan, Sr.ASC (for PTI). Whilst each counsel presented his arguments separately, there was extensive commonality in their submissions. Primarily, the contention of these learned counsel was that Article 69(1) of the Constitution imposes a constitutional bar on the Court's jurisdiction to examine the proceedings in the NA. As a result, the ruling of the Deputy Speaker given in his Chair during the sitting of the NA on 03.04.2022 was protected. However, the learned Attorney General did not defend the ruling of the Deputy Speaker. Instead, he urged that leave to move the RNC under Rule 37(4) of the NA Procedure Rules was wrongly granted by 161 members of the NA. That only the majority of the total membership of the NA could grant leave i.e., 172 members. That in the absence of the requisite majority, the RNC had failed at the initial leave granting stage. We are not inclined to agree with the learned Attorney General's view as we have already noted in para 3 above that Article 95(1) of the Constitution mandates that at the leave granting stage only the approval of 20% of the total membership of the NA is necessary.

17. For a better understanding of the submissions made by the remaining learned counsel, Article 69 is produced below:

> "**69. Courts not to inquire into proceedings of Majlis-e-Shoora (Parliament).** (1) The validity of any proceedings in [Majlis-e-Shoora (Parliament)] shall not be called in question on the ground of any irregularity of procedure.
>
> (2) No officer or member of [Majlis-e-Shoora (Parliament)] in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in [Majlis-e-Shoora (Parliament)], shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.
>
> (3) In this Article, [Majlis-e-Shoora (Parliament)] has the same meaning as in Article 66."
>
> (*emphasis supplied*)

The crux of the arguments by the learned counsel for the Respondents was that the ruling of the Deputy Speaker, which paved the way for the dissolution of the NA, was immune from challenge owing to the protection provided to Parliamentary proceedings from judicial scrutiny by Article 69(1). Therefore, a judicial finding that adjudicates the validity of the Deputy Speaker's ruling will violate Article 69(1), encroach upon the jurisdiction of Parliament and offend the established doctrine of trichotomy of powers. Furthermore, it was contended that the ruling of the Deputy Speaker was justified on account of the cypher which demonstrated that the RNC was a product of collusion between a foreign State and the members of the Opposition Parties. Such conduct on the part of Opposition Parties, according to learned counsel, left no choice with the Deputy Speaker except to dismiss the RNC as it was

detrimental to the sovereignty and integrity of Pakistan and violative of the solemn obligation of loyalty imposed by Article 5 of the Constitution upon every citizen.

18. On the other hand, learned counsel for the Opposition Parties countered the submissions of learned counsel for the Respondents. Arguments were rendered by Mr. Farooq H. Naek, Sr.ASC and Mian Raza Rabbani, ASC (for PPPP), Mr. Makhdoom Ali Khan, Sr.ASC (for PML-N), Mr. Kamran Murtaza, Sr.ASC (for Jamiat Ulema-e-Pakistan) Mr. Mustafa Ramday, ASC (for Balochistan National Party – Mengal), Mr. Mansoor Usman Awan, ASC (for SCBA) and Mr. Salahuddin Ahmed, ASC (for SHCBA & SBC). Together they submitted that Article 69 of the Constitution protects only those Parliamentary proceedings from judicial review that suffer from procedural irregularities. However, no protection is granted to Parliamentary acts or proceedings that are violative of the Constitution notwithstanding that these are committed within the NA's four walls. In the instant case by dismissing the RNC against the PM without holding a vote, the Deputy Speaker breached Article 95(1) and (2) of the Constitution (reproduced in para 2 above). These provisions vest the constitutional right to move an RNC against a Prime Minister in 20% of the total membership of NA. And if the RNC is successfully moved, the same can only be disposed of by voting [Article 95(1) and (2)]. According to learned counsel, this legal position is also affirmed by Rule 37(8) of the NA Procedure Rules which notes:

> "37. **Resolution for vote of no-confidence against the Prime Minister.-**
> ...
>
> (8) The Assembly shall not be prorogued until the motion is disposed of or, if leave is granted, the resolution has been voted upon."
>
> (*emphasis supplied*)

Learned counsel submitted that the Deputy Speaker's ruling of 03.04.2022 was unconstitutional for breaching Article 95(2) which confers the substantive constitutional right of vote in the members of NA. Therefore, the ruling by extinguishing a substantive constitutional right went beyond the scope of Article 69 which merely protects procedural irregularities in the proceedings of the NA. Accordingly, this Court had the jurisdiction to adjudicate on and strike down the ruling and all the subsequent superstructural actions taken on the basis thereof.

Short Order Dated 07.04.2022

19. Having heard the arguments of both sides, the Court on 07.04.2022 disposed of the Constitution Petitions and the *suo motu* in the following terms:

> "**O R D E R**
>
> For detailed reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, these matters are disposed of in the following terms:
>
> 1. The ruling of the Deputy Speaker of the National Assembly ("Assembly") given on the floor of the House on 03.04.2022 ("Ruling") in relation to the resolution for a vote of no-confidence against the Prime Minister under Article 95 of the Constitution ("Resolution") (for which notice had been given by the requisite number of members of the Assembly on 08.03.2022, and in relation to which leave was granted to move the Resolution on

28.03.2022), and the detailed reasons for the Ruling (released subsequently and concurred with by the Speaker) are declared to be contrary to the Constitution and the law and of no legal effect, and the same are hereby set aside.

2. In consequence of the foregoing, it is declared that the Resolution was pending and subsisting at all times and continues to so remain pending and subsisting.

3. In consequence of the foregoing, it is declared that at all material times the Prime Minister was under the bar imposed by the Explanation to clause (1) of Article 58 of the Constitution and continues to remain so restricted. He could not therefore have at any time advised the President to dissolve the Assembly as contemplated by clause (1) of Article 58.

4. In consequence of the foregoing, it is declared that the advice tendered by the Prime Minister on or about 03.04.2022 to the President to dissolve the Assembly was contrary to the Constitution and of no legal effect.

5. In consequence of the foregoing, it is declared that the Order of the President issued on or about 03.04.2022 dissolving the Assembly was contrary to the Constitution and of no legal effect, and it is hereby set aside. It is further declared that the Assembly was in existence at all times, and continues to remain and be so.

6. In consequence of the foregoing, it is declared that all actions, acts or proceedings initiated, done or taken by reason of, or to give effect to, the aforementioned Order of the President and/or for purposes of holding a General Election to elect a new Assembly, including but not limited to the appointment of a care-taker Prime Minister and Cabinet are of no legal effect and are hereby quashed.

7. In consequence of the foregoing, it is declared that the Prime Minister and Federal Ministers, Ministers of State, Advisers, etc stand restored to their respective offices as on 03.04.2022.

8. It is declared that the Assembly was at all times, and continues to remain, in session as

summoned by the Speaker on 20.03.2022 for 25.03.2022 ("Session"), on the requisition moved by the requisite number of members of the Assembly on 08.03.2022 in terms of clause (3) of Article 54 of the Constitution. Any prorogation of the Assembly by the Speaker prior to its dissolution in terms as stated above is declared to be of no legal effect and is set aside.

9. The Speaker is under a duty to summon and hold a sitting of the Assembly in the present Session, and shall do so immediately and in any case not later than 10:30 a.m. on Saturday 09.04.2022, to conduct the business of the House as per the Orders of the Day that had been issued for 03.04.2022 and in terms as stated in, and required by, Article 95 of the Constitution read with Rule 37 of the Rules of Procedure and Conduct of Business in the National Assembly Rules, 2007 ("Rules").

10. The Speaker shall not, in exercise of his powers under clause (3) Article 54 of the Constitution, prorogue the Assembly and bring the Session to an end, except as follows:

a. If the Resolution is not passed by the requisite majority (i.e., the no-confidence resolution is defeated), then at any time thereafter;

b. If the Resolution is passed by the requisite majority (i.e., the no-confidence resolution is successful), then at any time once a Prime Minister is elected in terms of Article 91 of the Constitution read with Rule 32 of the Rules and enters upon his office.

11. If the Resolution is passed by the requisite majority (i.e., the no-confidence resolution is successful) then the Assembly shall forthwith, and in its present Session, proceed to elect a Prime Minister in terms of Article 91 of the Constitution read with Rule 32 of the Rules and all other enabling provisions and powers in this behalf and the Speaker and all other persons, including the Federal Government, are under a duty to ensure that the orders and directions hereby given are speedily complied with and given effect to.

12. The assurance given by the learned Attorney General on behalf of the Federal Government in C.P. 2/2022 on 21.03.2022 and incorporated in the order made in that matter on the said date shall apply as the

> order of the Court: the Federal Government shall not in any manner hinder or obstruct, or interfere with, any members of the National Assembly who wish to attend the session summoned as above, and to participate in, and cast their votes, on the no confidence resolution. It is further directed that this order of the Court shall apply both in relation to the voting on the Resolution and (if such be the case) in relation to the election of a Prime Minister thereafter. It is however clarified that nothing in this Short Order shall affect the operation of Article 63A of the Constitution and consequences thereof in relation to any member of the Assembly if he votes on the Resolution or (if such be the case) the election of a Prime Minister thereafter in such manner as is tantamount to his defection from the political party to which he belongs within the meaning of the said Article.
>
> 13. The order of the Court made in SMC 1/2022 on 03.04.2022 to the following effect, i.e., "Any order by the Prime Minister and the President shall be subject to the order of this Court" shall continue to be operative and remain in the field, subject to this amplification that it shall apply also to the Speaker till the aforesaid actions are completed."

20. We shall now set out our detailed reasons for declaring the ruling of the Deputy Speaker dated 03.04.2022 to be unconstitutional. As a necessary consequence of our said declaration the ensuing advice of the PM to dissolve the NA and the Presidential Order of dissolution thereof, occurring in quick succession, were also held to be invalid for breaching the embargo placed by the Explanation to Article 58(1) of the Constitution. It was therefore declared, *inter alia*, that the NA was in session at all times. The Speaker was also directed to conduct the business of the House on 09.04.2022 as per the Orders of the Day issued for 03.04.2022.

Maintainability

21. A preliminary matter that may be addressed at the outset is whether the Constitution Petitions and the *suo motu* proceedings are maintainable under Article 184(3) of the Constitution. Although neither learned counsel for the Opposition Parties nor the Respondents raised this point, we think it proper to deliberate the question because it bears jurisdictional importance.

22. Article 184(3) of the Constitution confers original constitutional jurisdiction upon the Supreme Court and stipulates the conditions for invoking and correspondingly exercising such jurisdiction. It is produced below for reference:

> "**184. Original jurisdiction of Supreme Court.**
> ...
>
> (3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article."
>
> (*emphasis supplied*)

It becomes clear from the foregoing provision that a matter may be taken up under Article 184(3), either *suo motu* by the Court or on the filing of a petition by a party, if it satisfies two conditions:

i. It relates to the enforcement of a fundamental right; and
ii. It concerns the public at large.

23. In the present controversy the fundamental right that has *prima facie* been violated and therefore requires enforcement is Article 17(2) of the Constitution. It reads:

> "**17. Freedom of association.**
> ...
>
> (2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan..."
>
> (*emphasis supplied*)

At an elementary level, Article 17(2) guarantees citizens the right to form or be a member of a political party. However, case-law emanating from the Court has given this provision a dynamic interpretation thereby expanding the ambit of its protection. In **Muhammad Nawaz Sharif Vs. President of Pakistan** (PLD 1993 SC 473) Chief Justice Nasim Hasan Shah (as he then was) observed in his concurring judgment:

> "Accordingly, the basic right "to form or be a member of a political party" conferred by Article 17(2) comprises the right of that political party not only to form a political party, contest elections under its banner but also, after successfully contesting the elections, the right to form the Government if its members, elected to that body, are in possession of the requisite majority... Any unlawful order which results in frustrating this activity, by removing it from office before the completion of its normal tenure would, therefore, constitute an infringement of this Fundamental Right."
>
> (*emphasis supplied*)

The above observation lays down that Article 17(2) encompasses the right of political parties having the requisite majority in the elected Assemblies to form the Government.

This view was subsequently endorsed by the Court in **Workers' Party Pakistan Vs. Federation of Pakistan** (PLD 2012 SC 681) at para 33.

24. The above formulation of Article 17(2) enshrines the crucial democratic principle of Parliamentary Government. That is government by a political party or a coalition of parties as comprise the majority of the total membership of the NA [headed by a Prime Minister elected in terms of Article 91(4) whose candidature for the said office is proposed by a said party or a coalition of parties]. The same principle is iterated in Article 95(4) which directs the removal of the Government of a Prime Minister who has lost the support of the total membership of the NA within the political party system on which our parliamentary democracy rests. It must always be remembered that the defeat/removal of a Prime Minister under Article 95 does not preclude the ruling party (or a coalition) from putting forward another candidate for the said office who may succeed in commanding the confidence of the majority of the NA in terms as just stated.

25. Rule by a democratic government is also affirmed in the Objectives Resolution which is a substantive part of the Constitution by virtue of Article 2A:

> " ...Wherein the State shall exercise its powers and authority through the chosen representatives of the people;"

The Court has also recognised Parliamentary Government as a 'salient feature' of the Constitution which cannot be repealed,

abrogated or substantively altered by Parliament through an amendment to the Constitution [ref: **District Bar Association, Rawalpindi Vs. Federation of Pakistan** (PLD 2015 SC 401) at pg.745 and **Mahmood Khan Achakzai Vs. Federation of Pakistan** (PLD 1997 SC 426) at paras 27 and 56]. Therefore, the fundamental principle that the 'powers and authority' of the State of Pakistan are to be exercised by a Government that is formed, run and maintained by the support of the majority of the directly elected representatives of the people in the NA functioning within the political party system is permanently entrenched in the Constitution.

26. The people of Pakistan, therefore, cannot be deprived of their right to be governed by their chosen representatives because ultimately it is the Government (along with other constituent elements of the State as defined in Article 7 of the Constitution) that is responsible for safeguarding the rule of law guaranteed to the people of Pakistan by Articles 4 and 25 of the Constitution. Whilst Article 25 is a fundamental right, Article 4 is a precursor to Part II, Chapter 1 of the Constitution which lays down the fundamental rights assured to the people of Pakistan. Therefore, both Articles enjoy a preeminent position in the context of rule of law. Any digression from the constitutional process of forming a representative Government erodes the rule of law thereby endangering the cherished values promised to the people of Pakistan by the Constitution. This was affirmed

by the Court in **Federation of Pakistan Vs. Muhammad Nawaz Sharif** (PLD 2009 SC 644):

> "54. ...Democracy without the rule of law becomes rule of the mob or illiberal democracy i.e. a system where rights of minorities are not protected and where human rights regime suffers badly..."
>
> (*emphasis supplied*)

Therefore, the summary dismissal of the RNC by the Deputy Speaker on 03.04.2022 on which basis the President, whilst following the advice of the PM, dissolved the NA *prima facie* contravened not only the express command of Article 95 of the Constitution but also repudiated the rule of law which is an indispensable foundation of parliamentary democracy envisaged by the Constitution. In the result, the Deputy Speaker's ruling and the actions of the PM and the President defeated the right of the Opposition Parties to test their voting strength in support of the RNC and if successful, to form the next Government in exercise of their fundamental right under Article 17(2) of the Constitution.

27. Insofar, as the element of public importance is concerned it is established that the same has to be determined by the Court with reference to the facts and circumstances of each case [ref: **Muhammad Tahir-ul-Qadri Vs. Federation of Pakistan** (PLD 2013 SC 413) at para 26(c)]. In the same case the Court also elaborated upon the term 'public' as follows:

> "26. ...
>
> (a) The term 'public' is invariably employed in contradistinction to the terms private or

> individual and connotes, as an adjective, something pertaining to or belonging to the people; relating to a nation, State or community. In other words, it refers to something which is to be shared or participated in or enjoyed by the public at large, and is not limited or restricted to any particular class of the community."
> (*emphasis supplied*)

We have already observed that the combined actions of the Deputy Speaker, PM and President left the public at large without an elected Legislature and Executive, the two crucial constitutional pillars of the State. Therefore, the people of Pakistan were denied their fundamental right to be governed by a constitutional Parliamentary Government in violation of the rule of law. Rather than following the constitutional course prescribed in Article 91(4) of the Constitution for the election of a new Prime Minister, the people were unlawfully forced into an election due to the *prima facie* unconstitutional dissolution of the NA at the hands of the Deputy Speaker and the PM. A constitutional crisis was, therefore, created in the country on 03.04.2022. The political void in governance and uncertainty that ensued affected every single citizen of Pakistan, all of whom were caught in the turmoil that loomed large in the country.

28. We are of the opinion that in the above circumstances the ruling of the Deputy Speaker and the subsequent actions of the PM and President *prima facie* infringed the fundamental rights of the Opposition Parties and the public at large. The Constitution Petitions filed by PPPP,

PML-N, SCBA, SHCBA and SBC and our *suo motu* notice are therefore maintainable under Article 184(3).

Cypher

29. A pivotal issue on which learned counsel for the Respondents directed their submissions was the cypher message of 07.03.2022 sent to the Ministry of Foreign Affairs by a senior Pakistani diplomat stationed in a foreign capital. As per counsel for the Respondents the cypher established that the RNC was moved against the PM on the behest of a foreign State. It may be noted for the record that the text of the cypher was not shown to the Court by learned counsel for the Respondents during the proceedings. Its contents were, however, partially disclosed in the detailed reasons issued in support of the Deputy Speaker's ruling. The detailed reasons also refer to the decision of the NSC taken on 31.03.2022 for the Government of Pakistan to issue a demarche to the concerned foreign State in response to the cypher.

30. We appreciate the reluctance of learned counsel to share the cypher with the Court and to make a full disclosure of its contents. Firstly, because the cypher did not form part of the material quoted by the Deputy Speaker in his ruling and in his detailed reasons given in support thereof. Therefore, it may have been inappropriate to use it before us to justify the dismissal of the RNC for alleged unconstitutionality and for refusing a vote on it in the NA as mandated by Article 95(2) of the Constitution. Secondly, the cypher is a secure internal

communique from a Pakistani diplomat stationed abroad to the concerned officer(s) of the Ministry of Foreign Affairs. Allegedly it records the perception of a foreign State official about the potential implications of the success or failure of the RNC against the PM. Therefore, it appears that the cypher primarily concerns international relations and matters involving national security considerations. These subjects essentially call for a response by the Executive based on its policy and political imperatives. In the present case the invocation of Article 5 of the Constitution (produced in para 10 above) as the enabling law for the impugned action by the Deputy Speaker shows that the national security paradigm formed the primary basis of his ruling. In claims of the defence of national security properly and lawfully raised before it, the judicial branch tends to tread carefully and takes into consideration as appropriate the views of the Executive. In this regard, reliance is placed on the decision of the UK House of Lords in **Home Secretary v Rehman** ([2003] 1 AC 153) at pg.187:

> "[31] ...It is well established in the case law that issues of national security do not fall beyond the competence of the courts... It is, however, self-evidently right that national courts must give great weight to the views of the executive on matters of national security..."
>
> (*emphasis supplied*)

The rationale for adopting a cautious approach in the determination of national security issues has been aptly

explained by the Court in **Wukala Mahaz Barai Tahafaz Dastoor Vs. Federation of Pakistan** (2014 SCMR 111):

> "2. A bare reading of the afore-quoted prayers would indicate that the issues raised in the Constitution petition and the prayer made are relatable to matters of foreign policy, defence and security of the country. Such issues are neither justiceable nor they fall within the judicial domain for interference under Article 199 of the Constitution of Islamic Republic of Pakistan. Any such interference by the courts would be violative of one of the foundational principles of the Constitution, which envisages a trichotomy of powers between the Legislature, Executive and Judiciary..."
>
> (*emphasis supplied*)

31. However, the restraint exercised by the Courts in matters of national security should not be absolute. The House of Lords supported this view in the case of **Rehman** (*supra*). Judicial review is permissible but only on narrow grounds:

> "**Applications for Judicial Review, Law and Practice (Graham Aldus and John Alder)**
>
> There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited..."
>
> (*emphasis supplied*)

The observations of the UK House of Lords in **C.C.S.U. v Minister for Civil Service** ([1985] AC 374) in this regard are also pertinent:

> " ...But if the decision is successfully challenged, on the ground that it has been

> reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on grounds of national security..."
> (*emphasis supplied*)

Whilst the **C.C.S.U.** case (*supra*) was concerned with an administrative decision taken by the Executive, we are of the considered opinion that the reasoning propounded in it also applies to the *prima facie* unconstitutional decisions of the Government that are justified and defended on the touchstone of national security. In the present matter fundamental rights of the people and the Opposition Parties are at stake. Therefore, in view of the above cited dicta it is clear that the *bona fides* of the Government's defence of national security must be substantiated by evidence to justify the impugned ruling of 03.04.2022 given by the Deputy Speaker. Failure to do so will result in the impugned action of the Government being examined under ordinary principles of judicial review.

32. Before us learned counsel for the Respondents have forcefully argued that the cypher raises grave national security concerns; that it is conclusive proof that foreign elements are conspiring with certain persons in Pakistan to undermine the sovereignty and integrity of Pakistan by effecting a regime change; and that the Deputy Speaker in his wisdom, having knowledge of the contents of the cypher, averted a national security crisis by dismissing the unconstitutional RNC. Therefore, on the said defence of national security learned counsel vehemently argued that the Court should not interfere

with the ruling of the Deputy Speaker given on 03.04.2022. While we accede that the Court has limited jurisdiction to question the Government's decisions on matters of national security, we do not find much force in the remaining contentions of learned counsel. We have already noted that when national security is taken as a defence to sustain a decision by the Government that is *prima facie* unconstitutional then the Government is under an obligation to substantiate the *bona fides* of its defence. To do so the Government must produce evidence to demonstrate the defence in order to escape legal scrutiny of its impugned action. However, in their case before us the Respondents have rested their entire defence of national security and claims of 'blatant foreign interference in the internal affairs of Pakistan' (ref: para 5 of the detailed reasons, reproduced in para 12 above) solely on the cypher. The contents of the cypher have not been shown either to us or the members of the NA who are accused of being involved in a foreign conspiracy against Pakistan. Nor has other evidence been provided, either to us or the NA, detailing the names of the members of the NA associated with the alleged conspiracy and the inducement, coercion or influence used by them to procure other members of the NA, including political parties in the ruling alliance, to vote for the RNC.

33. The detailed reasons given by the Deputy Speaker on 03.04.2022 are also ambivalent about the contention that members of the Opposition Parties are involved in the foreign

conspiracy against the PM. Indeed, the detailed reasons accept that the allegation against the Opposition Parties requires probe:

> "9. ...The fundamental existential issue should be clearly settled first leaving no doubt or taint of external interference or collusion of Pakistani citizens including few member of the National Assembly[,] [i]f any, in this unholy venture. This would require a thorough investigation by appropriate forum or authority under the law..."
>
> (*emphasis supplied*)

The said observation made by the Deputy Speaker acknowledges that the material shown to him was either incomplete, insufficient or inconclusive. This is also evident in the factual matrix set out in the detailed reasons which notes the chronology of the RNC but fails to refer to any person in Pakistan, by name or otherwise, who is alleged to be involved in a scheme with a foreign State to move the RNC. This is possibly the reason why the Deputy Speaker recommended a thorough investigation in the matter to corroborate the stance of the PM and the Law Minister that a foreign conspiracy was brewing against the Government of the day with the help of members belonging to the Opposition Parties.

34. However, despite receiving the cypher on 07.03.2022 the information conveyed in it was neither investigated by the Government nor were its contents alluded to during the sittings of the NA on 28.03.2022 and 31.03.2022. Also the allegations levelled against the members of the

Opposition Parties were not put to them. It was only on 03.04.2022, when the RNC was fixed for voting as per the Orders of the Day, that the Law Minister raised this matter for the first time before the NA and asked the Deputy Speaker to give a decision on the constitutionality of the RNC. Additionally, according to a press statement given by the Law Minister on 02.04.2022, as reported by the Daily Express Tribune, the Cabinet formally gave its approval to constitute a Commission under the Pakistan Commissions of Inquiry Act, 2017 (**"2017 Act"**) to probe into the alleged foreign conspiracy. The said decision by the Government also *prima facie* indicates the insufficiency of the available evidence, if any, to justify its claim that the RNC was dismissed by the Deputy Speaker on the ground of national security. Therefore, due to dearth of material we are unable to accept the said plea or issue a finding on its merits.

35. Nevertheless, due to the lack of verification of the claims of foreign interference by the Respondents, the only information of such interference that is presently available before us is the opinion and apprehension of the Deputy Speaker that a foreign State is conspiring against the sovereignty and integrity of Pakistan. However, neither his ruling nor his detailed reasons claim that the cypher shows any member of the Opposition Parties (named or unnamed) to

have interacted with a foreign State to bring the RNC in order to oust the PM and his Government. In the absence of cogent, reliable and relevant evidence showing the RNC to be contrary to Article 5 of the Constitution on account of being a product of collusion between its movers and the representatives of a foreign State, the Court cannot accept the Respondents defence that the alleged contravention of Article 95 of the Constitution by the Deputy Speaker is protected from judicial scrutiny on the claim of national security.

36. Under Article 95(2) the Deputy Speaker had 7 days from 28.03.2022, when the RNC was moved in the NA, to take a vote on the RNC. This gave him time till 04.04.2022 to conduct a vote on the RNC. Therefore, when the Law Minister raised the point of order on 03.04.2022 regarding the cypher and the unconstitutionality of the RNC, the Deputy Speaker had the opportunity to put the matter before the NA for discussion on the contents of the cypher and its effect, if any on the RNC. However, without hearing any other member of the NA and without taking a vote on the RNC, he simply dismissed the latter on the basis of the singular statement of allegations made by the Law Minister. In so doing, the Deputy Speaker not only disregarded the provisions of Article 95 of the Constitution but also ruled on Article 5 *ibid* which was a matter outside his cognisance and jurisdiction. This is apart from condemning unheard the members of the Opposition Parties

against whom serious allegations of disloyalty to the State and disobedience of the Constitution were levelled by the Law Minister.

37. It is a settled principle of law that Courts decide disputes on the strength of established facts and not on surmises or mere conjectures. Reference is made to the judgment of Justice Ejaz Afzal Khan (as he then was) in **Imran Ahmad Khan Niazi Vs. Mian Muhammad Nawaz Sharif** (PLD 2017 SC 265):

> "19. ...Courts of law decide the cases on the basis of the facts admitted or established on the record. Surmises and speculations have no place in the administration of justice. Any departure from such course, however well-intentioned it may be, would be a precursor of doom and disaster for the society..."
> (*emphasis supplied*)

The detailed reasons and later the Cabinet decision of 02.04.2022 acknowledge the need for an inquiry to be conducted to establish the alleged collusion between the members of the Opposition Parties and a foreign State. Such an inquiry into facts can, in the first place, be carried out either by a Commission constituted by the Federal Government under the 2017 Act or by a specialised Commission constituted under an Act of Parliament or an Ordinance. This latter route was adopted by the PML-N Government in 2015 when Mr. Mamnoon Hussain, the then President of Pakistan, promulgated the General Elections 2013 Inquiry Commission Ordinance, 2015 which empowered the General Elections 2013 Inquiry Commission to 'inquire into the conduct of the General

Elections 2013' [ref: **Suo Motu Case No.7 of 2017** (PLD 2019 SC 318) at para 22].

38. The Respondents plea that this Court should *suo motu* take up the defence of national security and allegation of breach of sovereignty is without precedent. Equally, in the absence of evidence *prima facie* demonstrating the plea of the Respondents, the Court lacks the jurisdiction to launch into a roving inquiry. Authority for both contentions can be found in the case of **Watan Party Vs. Federation of Pakistan** (PLD 2012 SC 292). In that matter a number of constitution petitions were filed by different persons praying for a probe into a memo drafted by a former Ambassador of Pakistan to the US for the then US Chairman of Joint Chiefs of Staff (**"CJCS"**). The Court after examining the record produced by the parties, which included admissions made by Government representatives and by the CJCS that the memo existed, rejected the defence of political question raised by the Government on the touchstone of fundamental rights. Therefore, in that case aggrieved parties invoked the jurisdiction of the Court and evidence of admissions was brought on record but the Government was disinclined to appoint an Inquiry Commission. Faced with these circumstances the Court formed a Judicial Commission to probe the origin, authenticity and purpose of the memo. Such prerequisites are lacking in the present case.

Deputy Speaker's Ruling

39. We may now consider the legal validity of the ruling given by the Deputy Speaker on 03.04.2022 which lies at the heart of the instant controversy. The superstructure of decisive actions taken by the PM and on his binding advice by the President in quick succession on 03.04.2022 are predicated on the ruling of the Deputy Speaker given in the morning of 03.04.2022. Learned counsel for the Respondents vehemently objected the Court's jurisdiction to examine this question in light of the bar contained in Article 69 of the Constitution (reproduced in para 17 above). With the exception of the learned Attorney General, it was urged by the remaining counsel that the ruling of the Deputy Speaker was protected as it constituted the internal proceedings of Parliament. It was also contended that interfering with the ruling of the Deputy Speaker would amount to undermining the sovereignty of Parliament and be a violation of the trichotomy of powers, a doctrine that is the bedrock of our constitutional framework. In response, learned counsel for the Opposition Parties submitted that the protection afforded by Article 69(1) immunises only irregularities of procedure committed during the proceedings in the NA. Its bar, however, does not save breaches of substantive constitutional provisions, namely, in this case Article 95 of the Constitution.

40. Whilst learned counsel have addressed arguments on Articles 69 and 95 of the Constitution interchangeably, we

shall deal with them separately to enable a clearer discussion of the points raised.

A. Article 69 of the Constitution

41. It is evident from the provisions of Article 69(1) that the same exempt 'proceedings in Parliament' from judicial scrutiny if these suffer from an 'irregularity of procedure:'

> "**69. Courts not to inquire into proceedings of Majlis-e-Shoora (Parliament).** (1) The validity of any proceedings in [Majlis-e-Shoora (Parliament)] shall not be called in question on the ground of any irregularity of procedure."
>
> (*emphasis supplied*)

42. Prior to Article 69(1) of the Constitution, proceedings in Parliament were also protected by the erstwhile Constitutions of 1956 and 1962:

> "**The Constitution of the Islamic Republic of Pakistan, 1956**
>
> Privileges, etc., of members of the National Assembly. **56.—** (1) The validity of any proceedings in the National Assembly shall not be questioned in any court.
>
> **The Constitution of the Islamic Republic of Pakistan, 1962**
>
> **Privileges, etc., of Assemblies.** 111. (1) The validity of any proceedings in an Assembly shall not be questioned in any Court."
>
> (*emphasis supplied*)

A comparison of the above-cited constitutional provisions brings out the difference in the ambit of protection given to proceedings in Parliament over time. Whereas Article 69(1) only bars judicial scrutiny of proceedings in Parliament to the extent that these suffer from an irregularity of procedure, the protection accorded by the erstwhile Constitutions of 1956 and

1962 to such proceedings was absolute. The immunity covered proceedings that may be tainted with illegality or even unconstitutionality. The enhanced protection granted to proceedings in Parliament by the Constitutions of 1956 and 1962 was strongly influenced by the protection given to proceedings in the House of Commons. This was affirmed by the Court in **Pakistan Vs. Ahmad Saeed Kirmani** (PLD 1958 SC 397), a case which was concerned with proceedings in the Provincial Assembly (**"PA"**):

> " ...Article 89 of the Constitution [Privileges, etc., of the members of the Provincial Assembly]... :—
> "the validity of any proceedings in a Provincial Assembly shall not be questioned in any Court".
> The Article specifies a number of other privileges, which it is not necessary to mention here in detail. It will be sufficient to say that so far as they go, they are precisely in line with the development of the same privileges in relation to the British Parliament... I consider that in a similar way, the protection granted to proceedings in a Provincial Assembly against interference by the Courts is to be understood and given its full content by reference to the historical development of that right, through some six centuries of contention, in relation to the House of Commons. I feel no hesitation in thinking that this provision was introduced into the Constitution with a full knowledge of the extent to which the House of Commons had succeeded in establishing its privilege against the jurisdiction of the Courts in relation to its own internal proceedings."
> (*emphasis supplied*)

To place the above observation in context, the immunity granted to proceedings in the House of Commons as codified in Article IX of the Bill of Rights 1688 is produced below:

> "That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be

> impeached or questioned in any Court or Place out of Parlyament."
>
> (*emphasis supplied*)

43. The rationale for such absolute immunity was aptly explained by the Court in **Ahmad Saeed Kirmani** case (*supra*):

> " ...There is a long history behind the formulation of the doctrine [of privileges] as applied to the House of Commons, which had a fiercer and more prolonged struggle for the assertion of its own privileges than had been necessary for the House of Lords, which had always been a body exercising judicial jurisdiction of pre-eminent nature. One of the difficulties against which the House of Commons had to struggle was that the House of Lords was the ultimate Court of Jurisdiction, and by submitting its domestic affairs to the jurisdiction of the ordinary Courts, it inevitably assumed a position of permanent inferiority to the House of Lords. Consequently the House of Commons had to struggle not only against the Crown and the Courts, but also against the House of Lords, and in the course of the struggle, it sought for a considerable time, the special protection of the King for its customary rights. In the course of repeated efforts to assert its rights, its claims became, in the words of May, "hardened into legally recognised privileges"..."
>
> (*emphasis supplied*)

Therefore, to secure its independence and authority the House of Commons waged a long struggle against the power of the Crown, the Courts and the House of Lords to achieve a heightened level of protection against the dominance of these three institutions.

44. However, in our jurisdiction such expansive and absolute protection was dispensed with by Article 69(1) of the Constitution and a marked departure was made from the previous law stipulated in the erstwhile Constitutions of 1956 and 1962. The protection now afforded to proceedings in Parliament by Article 69(1) gives cover only to the form and

manner of proceedings in the NA, in particular the procedure specified in the NA Procedure Rules that regulates the business of the House. As a result, proceedings that infringe the provisions of the Constitution are no longer protected. This pertains to provisions that create substantive rights and duties or prescribe procedure. To appreciate the impact of 'procedural law' and 'substantive law' reference is made to the discussion by the Indian Supreme Court in **Thirumalai Chemicals Ltd Vs. Union of India** (AIR 2011 SC 1725):

> "14. Substantive law refers to body of rules that creates, defines and regulates rights and liabilities... Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them..."
>
> (*emphasis supplied*)

45. The cited definition shows that substantive law creates, defines and regulates rights conferred on persons whereas procedural law provides the machinery that needs to be put in motion for the realisation of these rights. Prior to the present Constitution, the Superior Courts were barred from intervening in the proceedings of Parliament even if these were violative of the Constitution. However, the Constitution has now empowered the Superior Courts to examine and adjudicate the validity of proceedings in Parliament if these contravene the substantive or procedural provisions of the Constitution. Therefore, post-1973 the Constitution has removed the erstwhile absolute immunity granted to parliamentary proceedings from judicial scrutiny. Instead violations of constitutional provisions are now justiciable. This

change in the law perhaps reflects a truer realisation of the doctrine of trichotomy of powers. The Court in **Nazar Abbas Jaffri Vs. Secretary to Government of the Punjab** (2006 SCMR 606) explained this doctrine as follows:

> "7. ...The scheme of our Constitution is based on Trichotomy as is held by this Court in Zia-ur-Rehman's case PLD 1973 SC 49. In the system of' Trichotomy, the Judiciary has the right to interpret, the Legislator has right only to legislate and the Executive has to implement..."
>
> (*emphasis supplied*)

46. The quoted observation expresses in compact form the doctrine of trichotomy of powers. However, the rigid application of the doctrine fails to cater to the modern day political and legal reality of most democratic systems of government under a written Constitution. The limits of authority, power and jurisdiction of the three branches of the State under our written Constitution was examined by the Court in **State Vs. Zia-ur-Rahman** (PLD 1973 SC 49):

> " ...As the learned Attorney-General has himself conceded, in the case of a Government set up under a written Constitution, the functions of the State are distributed amongst the various State functionaries and their respective powers defined by the Constitution. The normal scheme under such a system, with which we are familiar, is to have a *trichotomy* of powers between the executive, the Legislature and the judiciary...
>
> In all such cases, it will also be the function of the constitution to define the functions of each organ or each branch of an organ, as also specify the territories in which, the subjects in respect of which and sometimes even the circumstances in which these functions will be exercised by each of these organs or sub-organs. Limitations would, therefore, be inherent under such a system so that one organ or sub-organ may not encroach upon the legitimate field of the other... It cannot,

> therefore, be said that a Legislature, under a written Constitution, possesses the same powers of "omnipotence" as the British Parliament. Its powers have necessarily to be derived from, and to be circumscribed within, the four corners of the written Constitution."
> (*emphasis supplied*)

Therefore, our Constitution circumscribes the limits of jurisdiction and authority available to each of the three limbs of the State under the doctrine of trichotomy of powers. Whilst Courts will ordinarily exercise restraint and not enter into the domains of the Legislature and the Executive, they will intervene when either of these branches overstep their constitutionally prescribed limits. This approach is recognised by the judgment in **Jurists Foundation Vs. Federal Government** (PLD 2020 SC 1):

> "46. Judicial restraint in its substantial approach urges Judges considering constitutional questions to give deference to the views of the elected branches and invalidate their actions only when constitutional limits have clearly been violated..."
> (*emphasis supplied*)

It only stands to reason that in our system of government the Constitution is supreme. Therefore, the immunity granted to proceedings in Parliament are made subject to its provisions.

47. In **Sub-Committee on Judicial Accountability Vs. Union of India** [(1991) 4 SCC 699] the Indian Supreme Court relied on the principle that the Constitution is the fundamental law of the land to observe that the judicial branch was competent to review the proceedings in Parliament:

> "61. But where, as in this country and unlike in England, there is a written Constitution which constitutes the fundamental and in that

> sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the Constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited Government'. Judicial review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State..." (*emphasis supplied*)

48. Against this background, the Indian Supreme Court has interpreted the provisions of Articles 122(1) and 212(1) of the Indian Constitution. These provisions are identical to Article 69(1) of our Constitution. The former deals with proceedings in the Union Legislature whereas the latter is concerned with proceedings in the State Legislatures. Both provisions are verbatim. In several cases over a period of time, the Indian Supreme Court has held that these constitutional provisions protect only those proceedings in Parliament which suffer from an irregularity of procedure. However, the said immunity does not extend to proceedings that suffer either from an unconstitutionality or illegality. For ease of reference, Article 122 is reproduced below:

> "**122. Courts not to inquire into proceedings of Parliament.—** (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure."

One of the leading cases in this respect is **In re, Under Art. 143, Constitution of India** (AIR 1965 SC 745) wherein the Court analysed Article 212 as follows:

> "(62) Similarly, Art. 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure... Art. 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the Legislative Chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular..."
>
> (*emphasis supplied*)

49. This test was subsequently followed and adopted by the Indian Supreme Court in **Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha** [(2007) 3 SCC 184] at para 377 and **Ramdas Athawale Vs. Union of India** [(2010) 4 SCC 1] at para 36. It is, therefore, now an established principle of Indian law that proceedings in Parliament may be impeached if these infringe the Constitution and/or the law.

50. We find no cavil with the Indian Supreme Court's view on scrutinising the proceedings in Parliament against the provisions of the Constitution. However, we reserve our comments on the effect of an illegality/violation of a law on the protection provided to proceedings in Parliament. Indeed the latter scenario does not arise for determination in the present matter. The ruling of the Deputy Speaker dated 03.04.2022 has been challenged for violating the Constitution, specifically Article 95. We were shown the judgment passed by a larger Bench of the Sindh High Court in **Asif Ali Zardari Vs. Federation of Pakistan** (PLD 1999 Kar 54). It has been held

that the '*protection in clause (1) of Article 69… protects only "any irregularity of procedure" and obviously not a patent illegality*.' This finding in our view is worded too broadly without bearing reference to the question that was in issue before the High Court. A judicial determination that the violation of a specific law has rendered the proceedings in Parliament amenable to the Court's jurisdiction can properly be made on a case-to-case basis depending on the type and degree of illegality that is alleged. Consequently, we leave this question to be decided in an appropriate case.

51. Having noticed the threshold of protection provided by Article 69(1), it is now critical to understand what the phrase 'proceedings in Parliament' encompasses. The protection of Article 69(1) is only available when an act suffering from an irregularity of procedure is committed on the floor of the NA. The foremost acts that are protected by the Constitution are enumerated in Article 66(1):

> "**66. Privileges of members, etc.** (1) Subject to the Constitution and to the rules of procedure of [Majlis-e-Shoora (Parliament)], there shall be freedom of speech in [Majlis-e-Shoora (Parliament)] and no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in [Majlis-e-Shoora (Parliament)], and no person shall be so liable in respect of the publication by or under the authority of [Majlis-e-Shoora (Parliament)] of any report, paper, votes or proceedings."
>
> (*emphasis supplied*)

52. It may be observed from the text of Article 66(1) that proceedings in Parliament are essentially comprised of the two basic rights of the members of the NA, namely, the freedom of

expression and the right to vote. As set out in the opening words of Article 66(1) these rights are subject to any limitations placed by the Constitution. For instance, the freedom of expression is curtailed by Article 68 (restricts discussion in Parliament regarding the Judges of the Superior Courts) whereas the right to vote in certain matters is circumscribed by Article 63A (disqualification on the grounds of defection). However, in other respects these substantive constitutional rights enjoy the double protection of Article 66(1) and Article 69(1). Such supplementary immunity granted to the speech and vote of members of the NA is embedded in the Constitution to ensure the independence of Parliament. These acts of the members were also protected from judicial scrutiny by the erstwhile Constitutions of 1956 and 1962:

> "**The Constitution of the Islamic Republic of Pakistan, 1956**
> Privileges, etc., of members of the National Assembly. **56.—** ...
>
> (3) No member of the National Assembly, and no person entitled to speak therein, shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Assembly or any committee thereof.
>
> **The Constitution of the Islamic Republic of Pakistan, 1962**
> **Privileges, etc., of Assemblies.** 111. ...
>
> (3) A member of, or a person entitled to speak in, an Assembly shall not be liable to any proceedings in any Court in respect of anything said by him, or any vote given by him, in the Assembly or in any committee of the Assembly."
>
> (*emphasis supplied*)

53. Even in the UK, the phrase 'proceedings in Parliament' as used in Article IX of the Bill of Rights 1688 has

been interpreted in similar terms. An authoritative elucidation of it can be found in Erskine May (25th Edn, LexisNexis):

> "Paragraph 13.12
> ...The primary meaning of proceedings, as a technical parliamentary term, which it had at least as early as the seventeenth century, is some formal action, usually a decision, taken by the House in its collective capacity. While business which involves actions and decisions of the House are clearly proceedings, debate is an intrinsic part of that process which is recognised by its inclusion in the formulation of Article IX... An individual Member takes part in a proceeding usually by speech, but also by various recognised forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee."
>
> (*emphasis supplied*)

An overview of para 13.12 of Erskine May affirms that the freedom of every individual member to speak and vote and the collective decisions of the House are treated as proceedings in Parliament. The collective decision making of the House may be viewed as the extension of the right of every member of the House to express his/her views on a matter and ultimately vote on it to take a collective decision.

54. An important feature that emerges from the fundamental constituents of proceedings in Parliament, namely, free speech and vote, is that these all relate to the internal functioning of Parliament. Resultantly, the Courts in Pakistan and UK, whilst determining the ambit of and the immunity attached to proceedings in Parliament, refer to these proceedings as the 'internal proceedings' of Parliament [ref: **Ahmad Saeed Kirmani** case (*supra*) at pg.414 **Farzand Ali Vs. Province of West Pakistan** (PLD 1970 SC 98) at pg.120 and **Bradlaugh v Gossett** (1884) 12 QBD 271 at pg.278]. For proceedings in Parliament that qualify for or receive protection

from judicial scrutiny in the present matter, we shall henceforth also use the terminology of 'internal proceedings.'

55. Our foregoing discussion makes it clear that the ruling of the Deputy Speaker given on 03.04.2022 fails to qualify for protection as part of the internal proceedings of Parliament for the purposes of Article 69(1). The ruling was not the outcome of a vote in the NA. Instead, it was a unilateral decision taken by the Deputy Speaker at the behest of the Law Minister. Moreover, the Opposition Parties members of the NA who had filed a notice for moving the RNC against the PM on 08.03.2022 and granted leave to move the RNC against the PM on 28.03.2022 had crystallised the constitutional right/ obligation for there to be a vote under Article 95(2) on the RNC. That right/obligation could not be defeated or curtailed except by a vote on the floor of the NA. As the Deputy Speaker's ruling unilaterally refused the right of vote granted by the Constitution, no immunity under Article 69(1) attaches to it and the same can be reviewed by the Court. A similar view was also taken by the Court in respect of the Speaker's power under Article 63(2) of the Constitution. Under the said provision the Speaker may refer the question of a member's disqualification to the Election Commission of Pakistan. Rejecting the contention that such a decision of the Speaker falls within the purview of internal proceedings of the NA, the Court in **Muhammad Azhar Siddiqui Vs. Federation of Pakistan** (PLD 2012 SC 774) observed:

> "33. ...This Court has recently reaffirmed the relevant principles, in a judgment reported as *Munir Hussain Bhatti v. Federation of Pakistan* (PLD 2011 SC 407). While dilating upon the power of judicial review of the Court vis-à-vis Article 69 of the Constitution, this Court noted

> that although the committee constituted under Article 175A of the Constitution bore the title of "Parliamentary Committee" its nature and functions were such that its proceedings were not to be considered the internal proceedings of Parliament. Its functions were of an administrative nature and related to judicial appointments rather than parliamentary business. Therefore, its proceedings were held to be reviewable by the superior courts and there was no immunity from judicial scrutiny under Article 69 of the Constitution. The same principle applies to the Speaker's ruling under Article 63(2) of the Constitution. The Speaker performs the administrative task of determining whether a question of disqualification has arisen and if in doing so she goes beyond her constitutional remit, misapplies the applicable law or misuses her discretion, then her decision will be reviewable. Article 69 will not provide her ruling any immunity from judicial review."
>
> (*emphasis supplied*)

56. However, before concluding this discussion, we think it appropriate to exemplify our point about the ambit of Article 69(1). We shall therefore look at certain other defects allegedly committed in the internal proceedings of the NA by the Speaker and Deputy Speaker. In this respect it is alleged that the same constitute breaches of constitutional requirements. These are:

i. The failure of the Speaker to call a session of the NA as required by Article 54(3) of the Constitution within 14 days i.e., by 22.03.2022 after the requisition was filed on 08.03.2022;
ii. The failure of the Deputy Speaker to hear the members of the Opposition Parties on 03.04.2022 before giving his ruling on the constitutionality of the RNC moved against the PM; and
iii. The wrongful assumption of jurisdiction by the Deputy Speaker to issue the ruling of 03.04.2022.

57. The constitutional right of the requisite number of members to ask the Speaker to summon the NA in terms of Article 54(3) of the Constitution and the corresponding obligation of the Speaker to do so is a matter of great constitutional importance. Its significance is bolstered by the closing words of the provision, i.e., that when "*the Speaker has summoned the Assembly only he may prorogue it*". In a system of parliamentary democracy based on political parties, it is, in effect, an invaluable constitutional right conferred on the Opposition. The requirement of the summoning of the NA under Article 54(3) must therefore be strictly adhered to. Any purported resort to, or application of, Article 254 in relation thereto must be carefully considered. It must also be kept in mind that Article 254 is not a general 'escape', that allows the concerned constitutional authority to disregard, as it may please, the time limit set out in any constitutional provision. Rather, it is only intended to be a backstop, when said time limit cannot be adhered to for reasons that must be constitutionally justifiable. However, it is not necessary to consider these aspects in relation to the delay in the summoning of the NA after the stipulated period. Nor is it necessary to give any decision on the explanation offered to justify the delay. The reason is that notwithstanding the delay the session of the NA was duly convened on 25.03.2022 and progressed to the stage of voting on the RNC until the impugned ruling by the Deputy Speaker was issued. Therefore,

the breach of Article 54(3) no longer remains a live issue. Otherwise as already observed above a constitutional violation by the Speaker is a justiciable matter. However, in the facts and circumstances of the present case we neither condone the delay that occurred nor reject the explanation offered.

58. Insofar as the second objection is concerned, to our minds it is a matter of pure internal procedure as it regulates the conduct of business in the NA. In any event, no provision of the Constitution has been violated by the Deputy Speaker in issuing the ruling of 03.04.2022 without holding a discussion on the RNC. At most, the Deputy Speaker can be blamed for not strictly following the procedure laid down in Rule 17(5) of the NA Procedure Rules which reads:

> "17. **Speaker to decide points of order.-**
> ...
> (5) No debate shall be allowed on a point of order but Speaker may, if he thinks fit, hear members before giving his decision."
> (*emphasis supplied*)

However, it may be noticed that Rule 17(5) *ibid* grants the Speaker/Deputy Speaker the discretion to hold a debate on a point of order. It does not in any way bind him to hear other members of the NA before announcing his decision. Therefore, the failure of the Deputy Speaker to arrange a discussion on the point of order raised by the Law Minister does not suffer from any constitutional illegality or infirmity as would, in the facts and circumstances of the case, require us to give a decision in respect thereof.

59. Lastly, we have the question of whether the Deputy Speaker had the jurisdiction to issue the ruling of 03.04.2022 when Rule 28 of the NA Procedure Rules provides:

> "28. **Decision and ruling of the Speaker.-** Whenever the Speaker decides or gives his ruling on any matter on the floor of the House or in his office on the file, as the case may be, it shall not be called in question, and that shall be final except on a motion for rescinding it."

During the course of the hearings it was argued that as Rule 28 empowers only the Speaker to issue rulings, therefore, the Deputy Speaker had no jurisdiction under the said Rule to give the ruling of 03.04.2022. However, on a careful appreciation of the matter we are of the opinion that even the instant objection relates to the conduct of business in the NA. Reference may be made to Article 53 of the Constitution which states:

> "**53. Speaker and Deputy Speaker of National Assembly.**
> ...
> (3) When the office of Speaker is vacant, or the Speaker is absent or is unable to perform his functions due to *any cause*, the Deputy Speaker shall act as Speaker..."
>
> (7) The office of Speaker or Deputy Speaker shall become vacant if:
> ...
> (c) he is removed from office by a resolution of the Assembly, of which not less than seven days' notice has been given and which is passed by the votes of the majority of the total membership of the Assembly."
>
> (*emphasis supplied*)

The italicised underlined words in clause (3) are significant as they give leeway to the Speaker to determine whether he/she is in a position to perform his/her functions on any given day.

60. It is not disputed that on the morning of 03.04.2022, notice of a resolution for removing the Speaker had been filed in the NA Secretariat in terms of Article 53(7)(c). This may have persuaded the Speaker not to preside over the sitting of 03.04.2022. Although we are not inclined to enter into an exercise to ascertain the true motives of the Speaker in not chairing the sitting of 03.04.2022, we are of the opinion that on his refusal to take the Chair of Speaker on the said date Article 53(3) of the Constitution was attracted. This allowed the Deputy Speaker to act as the Speaker and therefore exercise all and any powers that vest in the said office. We are fortified in our conclusion by Article 260 of the Constitution (definitions) which defines the term 'Speaker' to include '*any person acting as the Speaker of the Assembly*.' Under Article 53(3) it is only the Deputy Speaker who can act as the Speaker; therefore, it is only logical that Article 260 includes the Deputy Speaker within the term 'Speaker.' Resultantly, no fault can be attributed to the ruling of 03.04.2022 on the ground that it was issued by unauthorisedly by the Deputy Speaker. However, whether the Deputy Speaker could have issued the substantive ruling that he ultimately pronounced in the NA on 03.04.2022 is a separate matter that requires independent examination. Therefore, it is to this question that we now turn.

B. Article 95 of the Constitution

61. Learned counsel for the Opposition Parties were all unanimous in the submission that the ruling of 03.04.2022

given by the Deputy Speaker was unconstitutional as the ruling dismissed the RNC against the PM by disregarding the requirement of voting upon it as laid down in Article 95(2). The necessity of a vote on the RNC is a substantive right of the members of NA, in particular those belonging to the Opposition Parties. It was the contention of the said learned counsel that the failure or success of RNC was a matter that, according to the Constitution, had to be decided by the NA collectively and not by a ruling of the Deputy Speaker. Nevertheless, the ruling of 03.04.2022 by the Deputy Speaker usurped that constitutional right of the Opposition Parties by summarily dismissing the RNC, without any debate/discussion, on the allegation that a foreign State had conspired with members of Opposition Parties to oust the PM.

62. To determine whether the ruling of the Deputy Speaker is violative of Article 95, the true meaning and import of this provision has to be gathered. The first aspect to examine is the process laid down in Article 95 of the Constitution for moving and subsequently passing an RNC. For convenience this provision is being reproduced below:

> "**95. Vote of no-confidence against Prime Minister.** (1) A resolution for a vote of no-confidence moved by not less than twenty per centum of the total membership of the National Assembly may be passed against the Prime Minister by the National Assembly.
>
> (2) A resolution referred to in clause (1) shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the National Assembly.
>
> (3) A resolution referred to in clause (1) shall not be moved in the National Assembly while the National Assembly is considering demands

> for grants submitted to it in the Annual Budget Statement.
>
> (4) If the resolution referred to in clause (1) is passed by a majority of the total membership of the National Assembly, the Prime Minister shall cease to hold office."
>
> (*emphasis supplied*)

A point of significance that can be observed from the afore-mentioned provision is that Article 95 is an amalgam of substantive and procedural law. It may be recalled from paras 44-45 above that substantive law confers rights/obligations on persons while procedural law regulates the process that needs to be followed for realising such substantive rights/obligations. The plain reading of Article 95 shows that the right to vote on the RNC is the substantive constitutional right granted to members of the Opposition Parties sitting in the NA [ref: Article 95(2)]. On the other hand, the requirements of 20% of the total membership of the NA agreeing to move an RNC and a majority of the total membership of the NA voting in favour of it within a period of 4-7 days from the date the RNC is moved are the procedural steps that need to be fulfilled before a Prime Minister can be ousted from office [ref: Article 95(1), (2) and (4)]. However, it is important to keep in mind that all of these matters have been expressly set out in the Article i.e., in the text of the Constitution itself. These matters, both substantive and procedural, have therefore been removed from the ambit of the power of the NA to control itself i.e., from the 'internal proceedings' of that House.

63. In the present matter, 142 members of the Opposition Parties signed the notice dated 08.03.2022 seeking

the removal of the PM. Thereafter, on 28.03.2022 161 members of the Opposition Parties granted leave to move the RNC against the PM. Therefore, the submission of the notice in the NA Secretariat followed by the grant of leave in the House crystallised the substantive right of the members of the Opposition Parties to vote on the RNC within a maximum period of 7 days from 28.03.2022 when the RNC was moved in the NA. This is plain from the text of Article 95(2) which reads: '*A resolution of no confidence shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the National Assembly*.'

64. Article 95(2) gives freedom to the NA to choose the day for voting on the RNC, between the 4th and 7th day, both days included for this purpose. However, the said Article does not allow any freedom regarding the method of deciding the RNC. Voting is prescribed as the only means to do so. The intent of Article 95(2) specifically (and Article 95 generally) is that once an RNC has properly been moved in the NA, voting thereon is a must and cannot be avoided. This view is reiterated by Rule 37 of the NA Procedure Rules which implements the purpose and intent of Article 95. The relevant sub-Rules are 37(5) and (8) which have already been set out in para 3 above but are being produced again for ready reference:

> "37. **Resolution for vote of no-confidence against the Prime Minister.-**
> ...
>
> (5) When the resolution is moved, the Speaker may, after considering the state of business, allot a day or days for the discussion on the motion:
>
> ...

> (8) The Assembly shall not be prorogued until the motion is disposed of or, if leave is granted, the resolution has been voted upon."
>
> (*emphasis supplied*)

It is clear from the above-cited sub-Rules that the purpose of the intervening period of 7 days (after the RNC is moved in the NA) specified in Article 95(2) is to allow members of the NA to inform themselves on how to resolve or decide this critical agenda through their vote. However, not later than the 7th day Rule 37(8) directs that a vote on the resolution must be held. In this regard, no special power vests in the Speaker / Deputy Speaker to avoid voting on the RNC.

65. Our view about voting being the exclusive means for disposing of the RNC is fortified by Chapter XV of the NA Procedure Rules that deals with 'Resolutions not mentioned in the Constitution.' This Chapter lays down the general procedure in respect of those resolutions and grants the Speaker (or the Deputy Speaker as the case may be) the power to dismiss them on account of their inadmissibility under the NA Procedure Rules or for being an abuse of the right to move a resolution. Specifically, Rule 161 *ibid* provides:

> "161. **Speaker to decide admissibility of resolution.-** The Speaker shall decide whether a resolution or a part thereof is or is not admissible under these rules and may disallow any resolution or a part thereof when in his opinion it is an abuse of the right of moving a resolution or is calculated to obstruct or prejudicially affect the procedure of the Assembly or is in contravention of any of these rules."
>
> (*emphasis supplied*)

66. However, no such power of dismissing a resolution for, *inter alia*, its inadmissibility is available to the Speaker in respect of 'Resolutions mentioned in the Constitution' (ref: Chapter XVI of the NA Procedure Rules). The point is clarified by Rule 174 of Chapter XVI which specifically incorporates certain Rules from Chapter XV ('Resolutions not mentioned in the Constitution') for their application to resolutions under the Constitution. However, Rule 161 is excluded from that list:

> "174. **Certain provisions of Chapter XV to apply.-** The provisions of rules 162, 167, 168, and 169 shall apply to resolutions under this Chapter."

67. Therefore, neither the Constitution nor the NA Procedure Rules vest the Speaker or the Deputy Speaker with any power to dismiss by a ruling an RNC for being inadmissible or non-maintainable. Accordingly, voting by members of the NA on resolutions mentioned in the Constitution, which includes the RNC, cannot be circumvented by the Speaker or Deputy Speaker. In this respect, the Indian Supreme Court in **Nabam Rebia & Bamang Felix Vs. Dy. Speaker, Arunachal Pradesh Legislative Assembly** [(2016) 8 SCC 1] has acknowledged that the members of the Legislative Assembly have the exclusive right to determine by vote the issue of removal of the Speaker under Article 179(c) of the Indian Constitution:

> "**179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—** A member holding office as Speaker or Deputy Speaker of an Assembly—
> ...

> (*c*) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:
>
> *Provided* that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:"
>
> (*emphasis supplied*)

In that case the Governor of the State of Arunachal Pradesh had called the session of the Legislative Assembly on 14.01.2016. However, on the filing of the notice of removal against the Speaker, the Governor summoned the session of the Legislative Assembly on 16.12.2015. The Supreme Court set aside the order of the Governor and observed:

> "174. During the course of hearing, it emerged that one of the primary reasons for addressing the message dated 9-12-2015, was the fact, that a notice of resolution for the removal of the Speaker Nabam Rebia, dated 19-11-2015, was addressed by 13 MLAs... to the Secretary of the Legislative Assembly. Accordingly, in the understanding of the Governor, it would constitute a constitutional impropriety, if the above notice of resolution for the removal of the Speaker, was not taken up for consideration forthwith, namely, immediately after the expiry of 14 days, provided for in the first proviso under Article 179. Insofar as the instant aspect of the matter is concerned, whilst we do not doubt the bona fides of the Governor, it cannot be overlooked that the Governor has no express or implied role under Article 179 on the subject of "the removal of the Speaker or Deputy Speaker". The aforesaid issue of removal of the Speaker (or Deputy Speaker), squarely rests under the jurisdictional authority of the Members of the Legislative Assembly, who must determine at their own, whether the notice of resolution for the removal of the Speaker (or the Deputy Speaker) should be adopted or rejected. In the instant view of the matter, the participatory role at the hands of the Governor, in the matter concerning the removal of the Speaker, can neither be understood nor accepted, and may well be considered as unwarranted."
>
> (*emphasis supplied*)

68. Although in the instant matter we are concerned with an RNC moved against the PM and the allegedly illegal actions of the Deputy Speaker, the dictum of the Indian Supreme Court is relevant for lending support to our conclusion that the RNC can be disposed of only by voting in the NA.

69. From the aforestated analysis: two aspects of the RNC become clear:

i. The obligation of holding a vote on a RNC is cast in mandatory terms (once leave to move the RNC has been granted). This is evident from the language of both Article 95(2) of the Constitution and Rule 37(8) of the NA Procedure Rules; and

ii. The power to pass or reject an RNC through a vote vests only in the NA. Therefore, its ultimate fate must be decided by the NA. The Speaker/Deputy Speaker have no veto power to rule on the admissibility or validity of an RNC without putting the same before the NA for its decision.

70. It stands established that both Article 95(2) and Rule 37(8) mandate a vote on an RNC. It becomes clear then that the ruling given by the Deputy Speaker on 03.04.2022 to dismiss the RNC against the PM and to prorogue the NA was in derogation of these provisions and, consequently, unlawful. After the speech by the Law Minister that questioned the constitutionality of the RNC (reproduced in para 9 above), the Deputy Speaker had two courses of action available. He could either have proceeded with the vote on the RNC in accordance with Article 95(2) and Rule 37(8) or allowed a discussion on the

point of order raised by the Law Minister in terms of Rule 37(5) and then directed a vote on the RNC. However, neither course of action was adopted by the Deputy Speaker who simply dismissed the RNC for being unconstitutional (the ruling is reproduced in para 11 above). By giving the said ruling, the Deputy Speaker committed jurisdictional excess by violating his substantive obligation to take a vote on the RNC as directed by Article 95(2) of the Constitution and equally by destroying the corresponding substantive constitutional right of the members of the Opposition Parties sitting in the NA to vote on the RNC.

71. The UK Supreme Court was faced with a similar situation in **R (Miller) v Prime Minister** ([2019] UKSC 41). In that case the Prime Minister had advised the Queen to prorogue Parliament. The Court observed that the Prime Minister's purpose was to prevent the members of the House of Commons from performing their duty and function of deliberating whether the UK should leave the European Union with or without a Withdrawal Agreement. Consequently, it declared the advice of the Prime Minister to be unlawful. In particular, the Court noted:

> "55. ...The Government exists because it has the confidence of the House of Commons. It has no democratic legitimacy other than that. This means that it is accountable to the House of Commons—and indeed to the House of Lords—for its actions, remembering always that the actual task of governing is for the executive and not for Parliament or the courts. The first question, therefore, is whether the Prime Minister's action had the effect of frustrating or preventing the constitutional role of Parliament in holding the Government to account.

> 56. The answer is that of course it did. This was not a normal prorogation in the run-up to a Queen's Speech. It prevented Parliament from carrying out its constitutional role for five out of a possible eight weeks...
>
> 57. Such an interruption in the process of responsible government might not matter in some circumstances. But the circumstances here were, as already explained, quite exceptional. A fundamental change was due to take place in the Constitution of the United Kingdom on 31 October 2019... But that Parliament, and in particular the House of Commons as the democratically elected representatives of the people, has a right to have a voice in how that change comes about is indisputable. And the House of Commons has already demonstrated, by its motions against leaving without an agreement and by the European Union (Withdrawal) (No 2) Act 2019, that it does not support the Prime Minister on the critical issue for his Government at this time and that it is especially important that he be ready to face the House of Commons."
>
> (*emphasis supplied*)

72. Although the decision in the **Miller** case (*supra*) was not due to any violation of any express textual constitutional provision (the UK has no written Constitution), the UK Supreme Court relied on constitutional principles to hold the prorogation to be unlawful for 'frustrating or preventing the constitutional role of Parliament in holding the Government to account.' In the present proceedings the situation is quite similar. The ruling of the Deputy Speaker brought an end to the RNC without holding the constitutionally obligatory vote. The ruling, read with the detailed reasons, justified the preemptive dismissal of the RNC without giving a finding on the allegation levelled against the members of the Opposition Parties. Therefore, not only was the express command of Article

95(2) of the Constitution violated but the ruling was given without allowing the NA to vote on the existence and if so the effect of the supervening plea of disloyalty to the State and disobedience of the Constitution.

73. Further, as per Rule 17(1) of the NA Procedure Rules, the Speaker / Deputy Speaker only has the power to give rulings on points of order if these pertain to:

> "17. **Speaker to decide points of order.-** (1) A point of order shall relate to the interpretation or enforcement of these rules or such Articles [of the Constitution] as regulate the business of the Assembly and shall raise a question which is within the cognizance of the Speaker."
>
> (*emphasis supplied*)

It may be noticed from Rule 17(1) that the jurisdiction of the Speaker / Deputy Speaker is confined to interpreting / enforcing the NA Procedure Rules or those Articles of the Constitution that regulate the business of the NA. However, the Speaker is not competent to issue a ruling on the interpretation / enforcement of any other provision of the Constitution that has no nexus with the business of the NA. Article 5 of the Constitution (reproduced in para 10 above) is a constitutional provision that does not regulate the business of the NA. That provision lays down the duty / obligation of every citizen to be loyal to the State and to obey the Constitution. The violation of Article 5 may, therefore, be attracted against citizens on proof in a Court of Law after confronting with evidence and granting a hearing to the accused party. In this case that would be the members of the Opposition Parties who are alleged to have conspired with a foreign State to oust the

PM. Consequently, the declaration by the Deputy Speaker that the RNC is contrary to Article 5 is presumptive, unilateral and without jurisdiction.

74. The Speaker's jurisdiction to rule on a point of order is confined both in terms of subject matter and manner of disposal. This is why ordinarily when a point of order is raised that is arguably not within the cognizance of the Speaker, the same is put before the NA for a decision through vote. This was pointed out by the Indian Supreme Court in **State of Punjab Vs. Satya Pal** (AIR 1969 SC 903). In that case a ruling of the Speaker on a point of order regarding the validity of an Ordinance was challenged. The relevant rule relating to a point of order for Punjab, India is r112(1) which is identical to Rule 17(1) of the NA Procedure Rules. It reads:

> "112. Points of order and decisions thereon.
>
> (1) A point of order shall relate to the interpretation or enforcement of these rules or such Articles of the Constitution as regulate the business of the House and shall raise a question which is within the cognizance of the Speaker."
>
> (*emphasis supplied*)

The Indian Supreme Court set aside the ruling of the Speaker and held:

> "25. Reference was made to Rule 112 which says that a point of order once raised must be decided by the Speaker and his decision thereon is final. It is thus urged that whatever the merits of the Speaker's ruling it must be treated as final. This is a claim which is un-founded. Points of order can only be raised in relation to the interpretation and enforcement of the rules and the interpretation of the articles of the Constitution regulating the business of the House and the question which is to be decided by the Speaker must be within his cognizance [Rule 112 (1)]. The finality of

> the ruling applies subject to this condition [Rule 112 (3)]. Now the exact point of order concerned the validity of the Ordinance... He did not confine his ruling to matters within his cognizance. He asserted himself against a law which was binding on him. If the Ordinance was to be questioned this was not the method. A resolution had to be passed under Article 213 (2) (a) disapproving it. In fact he was told that a resolution was to be made. Perhaps the Speaker was not sure that such a resolution would be passed. Democratic process and parliamentary practice demanded that the Speaker should have waited for a resolution to be moved for the consideration of the Assembly... Not being sure, he proceeded to nullify the Ordinance by a ruling which he was not competent to give. Therefore, his ruling was not only not final, but utterly null and void and of no effect."
>
> (*emphasis supplied*)

75. In the cited case the Speaker decided the validity of an Ordinance that was binding on him. This was beyond his jurisdiction under the Punjab Assembly Procedure Rules. The Indian Supreme Court accordingly declared his ruling null and void and of no effect.

76. It is clear that the ruling of the Deputy Speaker dated 03.04.2022 violated Article 95(2) of the Constitution and was also without jurisdiction in respect of its subject matter (it attempted to interpret Article 5 of the Constitution) and mode of disposal (the RNC was outrightly rejected rather than being voted upon in the NA). The ensuing legal effect of declaring the ruling unconstitutional and invalid is exemplified in the case of **Muhammad Anwar Durrani Vs. Prov. Of Balochistan** (PLD 1989 Quetta 25). In that matter, a larger Bench of the Balochistan High Court was confronted with the question of whether a Chief Minister who had been declared by the Speaker to be the holder of such office, but who had not

obtained a vote of confidence in accordance with the provision of Article 130(3) of the Constitution as it then stood, was a validly appointed Chief Minister who could advise the Governor to dissolve the PA under Article 112(1) of the Constitution. The High Court held that a Chief Minister who had not taken a vote of confidence was not a Chief Minister within the meaning of Article 112, therefore, he could not advice the Governor to dissolve the PA. Resultantly, the dissolution of the Balochistan PA was set aside. In respect of the Speaker's power to interpret the language of Article 130, the High Court observed:

> "11. ...Interpretation of written Constitution or ordinary Statute is the exclusive jurisdiction of the Courts and the Court has to interpret the Provisions of the Constitution... The word "majority" as used in Article 130(2-A) of the Constitution has to be interpreted by this Court and if it differs from the definition of the Speaker, this Court has jurisdiction to exercise its discretion."
>
> (*emphasis supplied*)

77. Therefore, the Court noted that if the Speaker/Deputy Speaker's interpretation of a constitutional provision is incorrect, the Courts have the jurisdiction to declare so. Essentially, in these circumstances it becomes the duty of the Courts to interfere with the ruling of the Speaker/Deputy Speaker to safeguard and uphold the Constitution. Such a pronouncement of the Court does not encroach upon the sovereignty of Parliament. Rather it reinforces the doctrine of trichotomy of powers under which the Court is entrusted the task of interpreting the Constitution and the law.

78. Accordingly, we hold that the ruling of the Deputy Speaker, concurred with by the Speaker, supported by the detailed reasons are without lawful authority and of no legal effect for violating the command of Article 95(2) of the Constitution and for suffering from excess of jurisdiction.

79. Since the ruling of the Deputy Speaker is devoid of legal effect, it now needs to be examined whether the PM had the power, in the above circumstances, to advise the President to dissolve the NA. Article 58(1) of the Constitution confers power on a Prime Minister to advise the President to dissolve the NA. However, there is an exceptional circumstance in which a Prime Minister cannot give such advice. This can be found in the Explanation to Article 58(1):

> "**58. Dissolution of the National Assembly.** (1) The President shall dissolve the National Assembly if so advised by the Prime Minister; and the National Assembly shall, unless sooner dissolved, stand dissolved at the expiration of forty-eight hours after the Prime Minister has so advised.
>
> *Explanation*.- Reference in this Article to "Prime Minister" shall not be construed to include reference to a Prime Minister against whom a notice of a resolution for a vote of no-confidence has been given in the National Assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or after the dissolution of the National Assembly."
>
> (*emphasis supplied*)

80. It may be observed that the Explanation bars a Prime Minister from advising the President to dissolve the NA if a notice has already been given in the NA that a RNC shall be moved against him. The rationale for the Explanation is self-evident. It restricts the power of a Prime Minister, in whom the

confidence of the majority of the members of the NA is under challenge, to prevent his ouster by dissolving the NA and thereby forcing the electorate to go for an early general election. The clear effect of the Explanation is to protect the NA from dissolution so that the person who enjoys the confidence of the majority of the NA continues to remain or becomes the next Prime Minister. In the instant matter, by dismissing the RNC rather than putting it to vote, the ruling of the Deputy Speaker purported to remove the fetter imposed under the Explanation to Article 58(1) on the PM's power to advise the President to dissolve the NA and thereby defeat the constitutional purpose and effort to protect the NA in order to ensure continuity of elected government in the country. However, as the ruling of the Deputy Speaker has been declared unconstitutional and illegal by our short order dated 07.04.2022, the RNC against the PM stands revived. Therefore, the Explanation to Article 58(1) of the Constitution comes into operation to bar the PM from advising the President to dissolve the NA. Until the defeat of the RNC the PM is at all material times prevented from advising the President to dissolve the NA. His advice tendered on 03.04.2022 to the President to such effect violates the bar under the Explanation to Article 58(1). It is contrary to the Constitution and is of no legal effect. Likewise, since the advice of the PM to dissolve the NA is rendered futile, the order of the President dated 03.04.2022 dissolving the NA loses constitutional legitimacy and is therefore *non est*.

81. These findings accord with a settled principle of law that when the basic order is without lawful authority and *void*

ab initio, then the entire superstructure raised thereon falls to the ground automatically [ref: **Atta-ur-Rehman Vs. Sardar Umar Farooq** (PLD 2008 SC 663) at para 9 and **Yousaf Ali Vs. Muhammad Aslam Zia** (PLD 1958 SC 104) at pg.117]. Since the ruling of the Deputy Speaker was the foundation on which the subsequent actions of the PM and President were structured, it is only logical and reasonable that the invalidity of the said ruling makes the said consequential and superstructural actions, namely, the PM's advice and the President's order of dissolution of NA, devoid of legal effect and these are declared as such.

General Elections or Restoration

82. There is another important matter on which much debate by counsel and serious attention of the bench was centered. It is that after giving the finding that the actions of the Deputy Speaker, PM and President were unconstitutional, what relief should the Court grant in the case. Should the NA be restored or should its dissolution be maintained leading to general elections in terms of Article 224(2) of the Constitution. This provision reads:

> "**224. Time of Election and bye-election.**
> ...
> (2) When the National Assembly or a Provincial Assembly is dissolved, a general election to the Assembly shall be held within a period of ninety days after the dissolution, and the results of the election shall be declared not later than fourteen days after the conclusion of the polls."

The learned Attorney General and other learned counsel for the Respondents primarily relied on the decision in **Federation of**

Pakistan Vs. Muhammad Saifullah Khan (PLD 1989 SC 166) to strengthen their stance that the dissolution of NA should nevertheless be maintained so that general elections are held. On the other hand, learned counsel for the Opposition Parties argued that the provisions of the Constitution should prevail and NA should be restored so that the process mandated by Article 95 is completed and its rightful consequences follow. Moreover, they submitted that the facts and circumstances of the present case were distinguishable from those that existed in the **Saifullah** case (*supra*).

83. We acknowledge the contention of learned counsel for the Opposition Parties that the **Saifullah** case (*supra*) is not squarely applicable to the present proceedings. In that case, the NA was dissolved on 29.05.1988, however, the dissolution was challenged belatedly before the Lahore High Court, sometime in August 1988 after the then President who had issued the dissolution order had passed away. Therefore, by the time the petitioners approached the Lahore High Court for relief the election schedule had been announced and the 'entire administrative machinery of the Federation and the Provinces [wa]s geared up to hold the general elections on 16th November, 1988.' Consequently, while the Lahore High Court declared the dissolution of the NA (and the PAs) to be unsustainable in law, it nevertheless refused to restore the Assemblies. The order of the Lahore High Court was assailed before this Court which heard the matter at length from 02nd - 5th October 1988. The short order was announced on 05.10.1988. At that stage the 'whole nation' was geared up for

the general elections which were merely a month away. Therefore, in these peculiar circumstances the Court considered that it would be in the national interest to let the elections proceed even though the order of dissolution issued by the then President was unlawful. In particular, the Court observed:

> "The Courts always keep in view the higher interest of Pakistan while resolving matters of national importance in accordance with the Constitution and law... The forthcoming elections are at hand and the people of Pakistan must be allowed to choose their representatives for the National Assembly on party basis, a right which is guaranteed to them under the Constitution [quoted from short order].
>
> The writ jurisdiction is discretionary in nature and even if the Court finds that a party has a good case, it may refrain from giving him the relief if greater harm is likely to be caused thereby than the one sought to be remedied [quoted from short order]..."
>
> Granted that the concept of "national interests taking precedence over individual rights" is an indefinite concept and that it can mean different things to different persons but in the instant case no such ambiguity existed because it was quite clear that the national interest would be better served by a recourse to the electorate than by the restoration of the existing Assemblies provided, of course, the holding of the elections on a very early date was ensured. The bane of our society has been that elections have not been held with any degree of regularity, after reasonable intervals. An overwhelming majority in the country was strongly of the opinion and a clear national consensus existed to the effect that the political malaise in the country could be solved only by holding national general elections, wherein all the political parties were allowed to participate. In conformity with this national consensus and the unambiguously expressed wish of all the political parties of Pakistan and every section of the people there was no difficulty in coming to the conclusion that an appeal to the electorate rather than restoration of the existing Assemblies,

> ensuring at the same time that the dates already fixed in this behalf namely the 16th November, 1988, for the National Assembly and 19th November, 1988, for the Provincial Assemblies were adhered to; was the proper course to be followed and that this was in the collective good…"
>
> (*emphasis supplied*)

84. It may be seen that the Court in the **Saifullah** case (*supra*) was inclined to not restore the NA because, *inter alia*, the dissolution of NA had not been challenged promptly, the whole nation was geared up for elections in a month's time and the people had a constitutional right to choose their representatives on party basis. Also all the political parties in the country favoured a general election. Therefore, the Court came to the conclusion that the national consensus amongst political parties and all sections of the people for an appeal to the electorate strongly indicated that a general election was in the collective good. However, the Court acknowledged that the concept of "national interest" taking precedence over individual rights is an indefinite concept which can mean different things to different persons. And that in the case before them the national interest would be better served by a recourse to the electorate. Without opining upon the weight of the factors that prevailed with the Court in the **Saifullah** case (*supra*) for maintaining the dissolution of NA, it is clear that but for one exception these factors represented non-legal and extraneous considerations. The sole criterion that had some nexus with

the Constitution and the law was that the elections would be held on party basis.

85. In the present matter also, learned counsel from both sides have cited various practical considerations in support of their arguments, namely:

Favouring General Elections

i. Regardless of the unconstitutionality of the acts of the Deputy Speaker, the PM and the President, the only viable solution out of the present political confrontation, polarisation and misgivings on account of the cypher was to appeal to the electorate;
ii. In case the PM is removed after a vote on the RNC, the likely Government that will come into existence will be a shaky coalition of 9 political parties and independents with diverse political agendas. Being faced with a formidable Opposition they will not be able to run a stable Government; and
iii. The Government that will take charge of the country will include persons who are facing criminal cases for commission of offences of corrupt practices.

Against General Elections

i. The Chief Election Commissioner informed the Court on 07.04.2022 that a fresh general election can only be held, at the minimum, after a period of 7 months. That 4 months are needed to finalise the process of delimitation of constituencies after the merger of FATA territory in the Province of KPK. And 3 months are required to make arrangements for the election process. Therefore, an election schedule was not presently available; and
ii. Only the NA has been dissolved and its elections alone will be held. This will happen while the PAs and Provincial Governments shall continue to function. Holding a fair

election with Provincial Governments in place would be difficult since such Governments are comprised of rival political parties.

86. The points urged by both sides present political scenarios that require political insight for assessing their effect. On the contrary, the Court exercises jurisdiction to adjudicate legal issues arising from political questions when the fundamental rights of a large body of people are involved. However, the Court avoids making political assessments based upon political or moral considerations that do not involve the determination of any question of law. None of the above noted points raised by either party poses any question of law for adjudication by the Court. Instead, these matters call for predictive or intuitive evaluation. The Court lacks the requisite skill and jurisdiction to decide them. Taking one example, the main objection that was forcefully pressed by the Respondents was that in case the RNC succeeds, the Government will be handed over to persons who are accused of committing acts of corruption or corrupt practices. However, the objection which rests on moral grounds fails to take into account that the law, including Articles 62 and 63 of the Constitution, the National Accountability Ordinance, 1999 and the Elections Act, 2017 allow persons accused of criminal offences to contest for and hold elected office. It is only upon the conviction of persons accused of such offences that they stand disqualified from contesting an election to a public office or from holding the same. The Court is duty bound to render judgments in

accordance with the law and cannot form the same on subjective criteria. Therefore, in the facts of the present case the Court can neither give an authoritative opinion nor surmise on the legal effect of the objections raised by either side.

87. Be that as it may, the precedent relied by the Respondents had a materially different factual matrix. This is the **Saifullah** case (*supra*) wherein the Court followed the view that the existence of a positive consensus between rival parties on the future course of action and the unanimous opinion of the electorate may justify the disregard of the plain constitutional or legal path. However, this approach was later regretted by the author of the **Saifullah** judgment, Chief Justice Nasim Hasan Shah (as he then was), in the **Nawaz Sharif Vs. President of Pakistan** case (*supra*):

> "Undoubtedly, two opinions can legitimately be entertained as to the correctness of the course which was followed here [**Saifullah** case]. On hindsight, I now think that after having found the action of dissolution of the National Assembly was not sustainable in law, the Court should not have denied the consequential relief and ought to have restored the National Assembly."
>
> (*emphasis supplied*)

In the above context, in the present case there is serious conflict and lack of consensus between the rival political parties. Additionally, no election schedule has yet been announced and the nation is not geared up for elections. The circumstances here are therefore materially different from those that existed in the **Saifullah** case (*supra*).

88. Even so being a Court of Law we must decide matters strictly in accordance with the Constitution and the law and not on the basis of expediency or individual perception. Therefore, if today we maintain the dissolution of NA, which has been brought about by the illegal actions of the Deputy Speaker, PM and President, we will effectively be disobeying the Constitution, specifically Article 95(2). As custodians of the Constitution [ref: **Corruption in Hajj Arrangements in 2010: In the matter of** (PLD 2011 SC 963) at para 20], the Court cannot lend its support to any extra-constitutional measure unless a compelling public interest established by evidence and floating on the face of the record so demands.

89. Consequently, having held that the ruling of the Deputy Speaker was without lawful authority, the PM's advice to the President was unconstitutional and the President's order of dissolution of NA was *non est*, it necessarily follows that the Court should grant the relief of restoration of the NA. The same conclusion was also arrived at by the larger Bench of the Balochistan High Court in the **Anwar Durrani** case (*supra*) after it had declared that the Chief Minister, who had not taken a vote of confidence, could not advise the Governor to dissolve the Balochistan PA:

> "22. The next question arises whether a mere declaration without any consequential relief may be granted. It has been stated at the Bar that nowhere in the world dissolved Assemblies have been restored. This is no valid reason to deny an effective relief. Facts of each case may not be identical. Mere declaration would not promote cause of justice. In case, Assembly is not revived, declaration would not

> solve the purpose. The illegality cannot be allowed to be perpetuated. The revival of Assembly is natural and legal consequence, once the order of dissolution is struck down.
>
> The relief for restoration of Assembly flows from the first relief. An important Organ of the State was dissolved. In a parliamentary and federal system, an Assembly is the most important body. People of the Province have expressed their collective will. A wrong has been done without any legal justification. It is a matter of constitutional principle that when rights have been transgressed, the remedy must be provided. When a legal injury is caused by reason of violation of any Constitutional right, then a relief which meets the ends of justice cannot be refused. It cannot, therefore, be accepted a sound principle of jurisprudence that a dissolved Assembly cannot be restored."
>
> (*emphasis supplied*)

90. However, such consequential relief may be denied by the Court if it can be shown that the same will perpetuate injustice or will not be just and proper in the circumstances. Reference is made to the concurring judgment of Justice Ajmal Mian (as he then was) in the **Nawaz Sharif Vs. President of Pakistan** case (*supra*):

> "58. I am inclined to hold that if a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of Constitutional jurisdiction as a matter of course. However, the Court may decline relief if the grant of the same, instead of advancing/fostering the cause of justice, would perpetuate injustice or where the Court feels that it would not be just and proper, for example, if the President dissolves the National Assembly under Article 58(2)(b) of the Constitution and before the Court decides the legality of such an order, elections take place which may show that 70% voters have cast their votes against the political party which was commanding the majority in the House before its dissolution and that it could secure 2% or 3% only of the total votes cast. In such an event, it will not be just and proper on the

> part of the Court to defeat the will of the political sovereign by reinstating the dissolved Assembly in spite of the above verdict of the political sovereign against it overwhelmingly. I am prompted to take the above view for the reason that the Courts are established for dispensing justice. So if the grant of a relief for the enforcement of a fundamental right or any other legal right instead fostering/advancing cause of justice, will perpetuate injustice, the Court will decline the same..."
>
> (*emphasis supplied*)

Although Justice Ajmal Mian's observations were made in the context of fundamental rights, we are of the view that they apply equally to situations where constitutional rights have been violated. His comments also reinforce our view (stated in para 88 above) that in situations of proven public interest the Court may deny consequential relief. Nevertheless, in the instant proceedings learned counsel for the Respondents have not been able to persuade us that restoring the NA will either perpetuate injustice, be unjust and improper in the circumstances or irreparably harm any public interest.

91. In fact, in our considered view the restoration of NA will strengthen the democratic norms of our political system under the Constitution, namely, Parliamentary form of Government. It does not concern the Court whether the RNC against the PM succeeds or fails. Our foremost priority is the maintenance of constitutional order in the country which can only be achieved if the NA is restored and permitted to perform its functions under the Constitution. However, a NA that operates merely as a rubber stamp for the Government of the day does not serve the country. The governance of a nation can

only be dynamic and efficient if it is managed by a Government that is held to account by a strong Opposition. But many a times in our legal and political discourse, the significance of a healthy Opposition is overlooked. Nevertheless, we find the account in Halsbury's Laws of England (Volume 20, 2014) on the indispensability of the Opposition to a flourishing democracy very apt:

> "117. ...'Her Majesty's opposition' performs essential functions in both Houses of Parliament, criticising the work of the administration in power and continuously offering an alternative administration to the electorate...
>
> ...While the opposition in the Commons cannot usually prevent the passage of government business or defeat government motions, it is by convention accorded full right to discuss and criticise the work of the government in debate and by question in each House. In this way the difficulties involved in implementing government policy are exposed and the development of government by... oligarchy is impeded..."
>
> (*emphasis supplied*)

It may be noticed that to prevent the decline into rule by oligarchy and to uphold the cherished principle of transparent governance, the presence of the Opposition in the NA (and the Senate) is necessary. The crucial role of the Opposition in a democracy was also explained by the Parliamentary Assembly of Council of Europe in Resolution 1601 (adopted on 23.01.2008):

> "Resolution 1601 (2008)
>
> Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament
>
> ...

> 3. A political opposition in and outside parliament is an essential component of a well-functioning democracy. One of the main functions of the opposition is to offer a reliable political alternative to the majority in power by providing other policy options for public consideration. By overseeing and criticising the work of the ruling government, continuously evaluating government action and holding the government to account the opposition works to ensure transparency of public decision and efficiency in the management of public affairs, thereby ensuring the defence of the public interest and preventing misuse and dysfunction."
>
> (*emphasis supplied*)

The Opposition Parties are a diverse combination of political parties whereas the Respondents are backed by the largest party in the NA. They have huge clout by virtue of their sheer numbers and so can play a decisive role whether in the Government or the Opposition in order to perform their constitutional obligations faithfully and diligently so as to serve the people of Pakistan to whom they have made a solemn pledge under the Constitution.

92. Accordingly, since the ruling and detailed reasons of the Deputy Speaker and the advice of the PM to the President to dissolve the NA have been declared unconstitutional, the dissolution of the NA by the President has no legal effect. The NA stands restored with immediate effect (in fact it is deemed to have been in existence at all times). The Speaker is, therefore, directed to convene a sitting of the NA forthwith and conduct the business of the House as per the Orders of the Day issued for 03.04.2022.

The *suo motu* proceedings and the related Constitution Petitions are all disposed of in the above terms.

Sd/-
Chief Justice

Sd/-
Judge

I agree but I am also going to give my concurring judgment.

Sd/-
Judge

I agree. I will also give a concurring judgment.

Sd/-
Judge

I agree with the findings of the HCJ. However, I am also giving my separate observation through a separate note.

Sd/-
Judge

Islamabad
07.04.2022
Irshad/Meher LC

APPROVED FOR REPORTING.

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.--- I have had the privilege to go through the main judgment authored by the Hon'ble Chief Justice. I agree with the same but I will also give a concurring judgment of my own comprising reasons in support of our unanimous short order dated 07.04.2022 (**PLD 2022 SC 290**), accordingly.

2. A resolution for a vote of no-confidence ("**the resolution**") against Mr. Imran Ahmed Khan Niazi, the then Prime Minister of Pakistan ("**the PM**") was submitted on 8th March, 2022 by a large number of the Members of the National Assembly ("**MNAs**"), well beyond the prescribed twenty per centum of the total membership of the National Assembly as required under Article 95(1) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"). On 20.03.2022 a Session of the National Assembly was summoned by the Speaker for 25.03.2022. On 25.03.2022 the session was adjourned after *Fateha* for a deceased MNA. On 28.03.2022 leave to move the resolution for vote of no confidence was granted by the House and the session was again adjourned to 31.03.2022 for discussion on the resolution. After some discussion, the session was adjourned from 31.03.2022 to 03.04.2022 for voting on the resolution for vote of no confidence. On 03.04.2022, the session was presided over by the Deputy Speaker (**Qasim Khan Suri**) without any explanation why the Speaker did not preside over. On 03.04.2022, Mr. Fawad Ahmed Chaudhary, Minister for Law & Justice rising on a point of order, submitted before the House while referring to Article 5 of the Constitution that in the normal circumstances under Article 95 it is the right of the members of House to move a resolution for vote of no confidence against the PM; however, the present resolution against the PM was apparently linked with and has a clear nexus with the efforts of a Foreign State to bring about change of government and as such cannot be entertained or allowed to be voted upon in this august House, and must be rejected. Whereupon the Deputy Speaker, without waiting even for a single moment, read in the House his pre-drafted ruling (**impugned ruling**") dated 03.04.2022, rejecting the resolution for vote of no confidence against the PM and consequently did not allow voting on the same. The Speaker (**Asad Qaisar**) also concurred with the said ruling by signing the same. The impugned ruling is reproduced herein below for ready reference:

"RULING OF THE SPEAKER ON NO-CONFIDENCE RESOLUTION

1. On today the 3' April 2022, Mr. Fawad Ahmed Chaudary, Minister for Law and Justice rising on a point of order drew attention of the Chair that in the normal circumstances under Article 95 of the Constitution it is right of the members to move a resolution for vote of no-confidence against the Prime Minister. He further stated that Article 5 of the Constitution provides that it is the basic duty of the every citizen to show the loyalty to the State. He also pointed out that Pakistani diplomat met with the officials of the foreign state and also informed about the intention of that State against the Prime Minister Imran Khan.

2. A notice for requisitioning the session of National Assembly was filed by members of the opposition in terms of Article 54(3) of the Constitution of Pakistan, with the Secretariat of the National Assembly on 8-3-2022. On the same date i.e., 8-3-2022 another notice under Rule 37 of the National Assembly Rules, for the notice of resolution of no confidence against Mr. Imran Khan, as Prime Minister was filed with the Secretariat of the National Assembly.

3. The session of the National Assembly was summoned to be held on 25-3-2022. After offering fateha the session was adjourned for 28-3-2022. On that date leave for moving resolution for a vote of no confidence in terms of Article 95 of the Constitution was granted and the session was adjourned for 31-3-2022. The session was then adjourned for 3-4-2022.

4. In the meanwhile Prime Minister Iman Khan addressed a public rally on 27-3-2022 at Parade ground, Islamabad. Mr. Shah Mahmood Qureshi, Minister for Foreign Affairs and Prime Minister Imran Khan briefly disclosed about a foreign country's interference in the internal affairs and parliamentary process in Pakistan. The details as later emerged were that on 7-3-2022 Pakistan's Ambassador deputed to an important foreign capital sent official correspondence i.e. cypher narrating details of a meeting and conversation with high official(s) of that foreign state. The gist of the contents of the cypher indicated that the foreign state was interfering in the internal affairs of Pakistan and Prime Minister Imran Khan was its primary target. The circumstance shows that there was nexus between no confidence motion against Prime Minister and the foreign intervention and the activities of that State's representatives deputed to Pakistan. The Federal cabinet as well as the National Security Committee (NSC) headed by Prime Minister, some members of the Federal Cabinet, The Chairman, Joint Chiefs of Staff Committee, and the three services Chiefs, meeting on 31 3- 2022 was briefed about the unwarranted foreign, interference in the internal affairs of Pakistan. It is a matter of record that after the meetings of the Federal Cabinet and the National Security Committee, Pakistan formally conveyed a demarche to the foreign state concerned.

5. Given the above facts and circumstances a briefing for the Parliamentary Committee on the National Security was arranged for briefing on the issue on 31-3-2022. Unfortunately the concerned members of the opposition choose to boycott or ignore the briefing. However, as Speaker and custodian of the National Assembly, I asked the concerned functionaries of the Government to provide me the relevant facts and information subject to the applicable laws. This was accordingly done. The facts reveled to me were absolutely shocking and completely unacceptable for any independent people with self respect and dignity. I was fully convinced that there was blatant foreign

interference in the internal affairs of• Pakistan and the duly elected Prime Minister of Pakistan was the prime target. When was even more shocking was the apparently close nexus and proximity between blatant foreign interference and the motion of no confidence against the Prime Minister also became evident.

6. For a number of reasons and save for what I have observed hereinabove, I would presently refrain from giving more and specific details about the foreign intervention and its links to the no-confidence motion moved against the Prime Minister Imran Khan. If and when so required by this august House and subject to applicable laws, details and specifics of foreign interference in the internal affairs of Pakistan and its parliamentary process including no confidence motion can be provided and discussed in greater detail in closed door in camera session.

7. Suffice it to say that to me it is now clear that there has been blatant foreign interference in the internal affairs of Pakistan and there exists a close nexus between such foreign interference and the campaign to oust and remove the democratically elected government headed by Prime Minister Imran Khan through different means including the motion for no-confidence initiated on 8-3-2022. No self respecting independent, democratic country and people with national pride and dignity could or should ever let such things to happen nor allow its democratic institutions including parliamentary processes to be so grossly abused by foreigners or foreign states to bring a change of any Government or Prime Minister as appears to be the case presently.

8. The membership of this august House is a matter of great honour and trust for every member. Any action though purported to be under the Constitution and the Rules but for extraneous purposes and goals which could compromise the sovereignty and independence of the country could not be sustained under any circumstances. Any such attempt must be thwarted and quashed.

9. The motion of no confidence against the Prime Minister is apparently linked with and has clear nexus with the efforts of the foreign State to bring about change of Government cannot be entertained or allowed to be voted upon in this august House and must be rejected empathetically as this could ever be the intent of the Constitution. The fundamental existential issue should be clearly settled first leaving no doubt or taint of external interference or collusion of Pakistani citizens including few member of the National Assembly. If any, in this unholy venture. This would require a thorough investigation by appropriate forum or authority under the law. However, without such thorough probe, if such motion no-confidence is entertained in the grab of parliamentary process now or allowed to succeed and a foreign country is able to achieve its goal to oust a democratically elected Government and/or Prime Minister in this manner, we shall cease to be an independent and sovereign country governed by the Constitution and the laws.

10. I, as the Deputy Speaker and custodian of the House and bound by the oath taken by me under the Constitution of Pakistan to preserve, protect and defend the Constitution cannot remain indifferent or act as unconcerned spectator let alone be instrumental in this unconstitutional act of change of Government and /or Prime Minister orchestrated by a foreign state. The present motion of no confidence being the very essence of the internal proceedings of the House cannot be entertained or allowed by me to proceed in these circumstances and has to be disallowed and accordingly rejected.

Note:

These are the detailed reasons of my order dated 3rd April 2022 in the sitting of the National Assembly

(Qasim Khan Sun)
Deputy Speaker
National Assembly of Pakistan

I concur with the above ruling.

(Asad Qaisr)
Speaker
3rd April 2022 ***National Assembly of Pakistan***"

Within minutes thereafter, the PM on a live TV channel announced that he had advised the President of Pakistan ("**the President**") to dissolve the National Assembly and the same within no time was followed by the dissolution of National Assembly by the President. A notification was also issued by the Cabinet Division stating that the PM has ceased to hold the office. The Hon'ble Chief Justice of Pakistan took SUO MOTU notice of the matter and the same was fixed before this Five-Members bench. Notices were issued to all the concerned.

3. The Attorney-General for Pakistan and the learned counsel for the Pakistan Tehreek-e-Insaf, PTI, both argued that under Article 69 of the Constitution this Court cannot inquire into any proceedings of Parliament. Further argued that the resolution of vote of no confidence was motivated by a Foreign State interested in the regime change in Pakistan; the PM, Speaker, Deputy Speaker and the Federal Minister while relying upon a letter / communication allegedly received from a Foreign state correctly exercised their respective constitutional powers. Hence, this Court has no jurisdiction to call in question any such constitutional action of the president, the PM, Speaker, Deputy Speaker

4. The learned Counsel for the other political parties made almost similar submission by arguing that the opposition parties individually started announcing in January 2022 that they were planning to move a vote of no confidence against the PM; the opposition

parties jointly endorsed the move in late February 2022; the alleged letter / communication was allegedly received by the PM on 07.03.2022 and after 19 days on 27.03.2022 the PM waved the letter during a mass meeting in Islamabad by presenting it a Foreign conspiracy / threat against him. Further, the opposition parties demanded that said letter / communication be presented before the Parliament but the same was not presented. The PM cannot continue in office as he does not hold majority of MNAs.

5. We have heard this matter for a couple of days including the learned Attorney-General and the learned counsel for the Pakistan Tehreek-e-Insaf, PTI and other political parties.

6. No doubt, the validity of the proceedings in the National Assembly and its sovereignty is protected by the Constitution. The clause (1) of Article 69 provides that the validity of any proceedings in the Parliament shall not be called in question on the ground of any irregularity of procedure whereas clause (2) of Article 69 provides that no officer or Member of the Parliament in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in the Parliament shall be subject to the jurisdiction of any court in respect of any such exercise of power by him. The issue as to what are, and what are not, the internal proceedings of the Parliament, which are beyond the pale of jurisdiction of the Courts has been dilated upon by this Courts in the past on many occasions. It would not be out of place to observe that Article 69 of the Constitution however does not place a complete bar on the jurisdiction of this Court. The actions by the Speaker, if based in violation of existing rules or the discretion so exercised by him affecting the smooth running of the functions of the House is, prima facie, in violation of judicious norms, cannot be given a protecting blanket of Article 69 of the Constitution. Reference here can be made to the case of *Muhammad Azhar Siddiqui v. Federation of Pakistan* (**PLD 2012 SC 774**).

7. It is a matter of record that the resolution against the PM was submitted on 8th March, 2022 by a large number of the MNAs well beyond the prescribed twenty per centum of the total membership of the National Assembly as required under Article 95(1). Since, the resolution was declared admissible by the Speaker, then the Speaker under Article 95(2) was under constitutional duty/responsibility to

hold voting thereon within the time frame prescribed therein that, "*a resolution shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the National Assembly*". Meaning thereby such a resolution should have been voted upon between three and seven days but the Speaker for no reason delayed the voting thereon and finally rejected the resolution on the question of inadmissibility which is alien to the Constitution. Once the leave to move the resolution is granted then that resolution has to be voted upon. The deputy Speaker in rejecting the resolution exercised a jurisdiction not so vested in him and his such unilateral act was unconstitutional and without lawful authority. Once the matter was fixed for voting, then the Speaker had no power and lawful authority to avoid voting or reject the resolution without voting. This alone is an act which is ultra vires the Constitution calling for interference by this Court.

8. The Speaker in a Parliamentary form of Government like us holds an office of highest distinction and has the sole responsibility cast on him of maintaining the prestige and the dignity of the House and its members. The Speaker enjoys a very high status and position of great respect and esteem in the parliamentary traditions. He, being the very embodiment of propriety and impartiality, has been assigned the function to regulate the procedure or the conduct of business, or for maintaining order in the Parliament. The Speaker enjoys a pivotal position which is and has been held by people of outstanding ability and impartiality. It may be noted that an elected member of the Assembly when elected as a Speaker, he ought to be neutral in the discharge of his duty and function and ought to be above politics. *(See Mirza Tahir Beg v. Syed Kausar Ali Shah and Others (**PLD 1976 SC 504**)).* While deciding any matter in his competence, the Speaker shall not be influenced by anyone, including the party to which he is affiliated. While portraying the entire episode notionally in our minds would reflect that the conduct of the Deputy Speaker throughout remained very partisan, manuring to undo the resolution. The conduct so reflected by the Deputy Speaker is unbecoming of such a prestigious position of the House of the legislators. It is again for the Parliamentarians to decide how to stop such a biased and partial act in future by a person holding the prestigious position like Speaker / Deputy Speaker.

9. Moreover, the Preamble/Objectives Resolution of the Constitution, which is a "substantive part of the Constitution and shall have effect accordingly" (Article 2A of the Constitution), mandates that the people of Pakistan "through the chosen representatives of the people" exercise their powers, and the most important power is the power to vote, but the Deputy Speaker in violation of the Constitution denied them the right to vote. The Speaker has utterly failed to discharge its solemn duty. The Speaker appears to have forgotten or ignored deliberately for certain reasons best known to him that he is required to discharge the duty enjoined upon him under the Constitution. The action of the Speaker rejecting the resolution vide impugned ruling would neither fall within the meaning of term "any proceedings in the Majlis-e-Shoora (Parliament)" used in Article 69, nor such action could be described as an exercise of power by the Speaker of the House regulating the procedure or the conduct of business in the Assembly and, therefore, in my opinion, no question of immunity for such an action can arise under Article 69 of the Constitution. The impugned ruling as such was a nullity in the eye of law, worthy of no credence.

10. Adverting to the other aspect of the matter that on 03.04.2022, the session was presided over by the Deputy Speaker without any explanation why the Speaker did not preside over. This act of both the Speaker as well as the Deputy Speaker is against the provisions of Article 53(3), which contemplates that, "*when the office of Speaker is* ***vacant,*** *or the Speaker is* ***absent*** *or is* ***unable to perform his functions due to any cause****, the Deputy Speaker shall act as Speaker, and if, at that time, the Deputy Speaker is also absent or is unable to act as Speaker due to any cause, such member as may be determined by the rules of procedure of the Assembly shall preside at the meeting of the Assembly*". The record shows that the Deputy Speaker read out the impugned ruling in the name of the Speaker as the same was also signed by the Speaker on the same day. Meaning thereby, on the day when the Deputy Speaker presided over the session of the House and read out the impugned ruling, the office of the Speaker was neither "vacant" nor was the Speaker "absent" or "unable to perform his functions". Even no explanation in this regard was placed on record subsequently by the Speaker or Deputy Speaker. For the foregoing reason, I would say without any hesitation that the Speaker and the Deputy Speaker had shown sheer disregard for the

mandatory provisions of the Constitution. The Deputy Speaker has had no authority to preside over the meeting of the Assembly and to pass impugned ruling on 03.04.2022 rejecting the resolution of vote of no confidence against the PM. The so called ruling of Deputy Speaker is, therefore, without jurisdiction and coram non- judice. This very act of the Deputy Speaker is sufficient enough to reflect his biased and prejudiced mind which in my view is against the norms and dignity of the chair of the Speaker. This very act, alone, is sufficient to annul the so called ruling which otherwise also has no legal sanctity.

11. Since the impugned ruling is found null and void and of no legal effect, the resolution would be deemed pending before the National Assembly. The PM would continue to suffer from disability under Explanation of Article 58(1) to advise dissolution of National Assembly which states that once a "resolution for a vote of no confidence has been given in the National Assembly" against the PM he could no longer advise the President to dissolve the National Assembly under Article 58(1) of the Constitution. Therefore, any order by the President to dissolve the National Assembly on the advice of such a PM is also declared as void.

12. Before parting with this order, it has been observed that the Constitution opens by stating that the exercise of authority "is a sacred trust" and can only be exercised through "the chosen representatives of the people." However, this sacred trust was violated amongst others by the President, PM, the Speaker, the Deputy Speaker and the Law Minister as the elected representatives of the people were prevented from voting on the resolution and for such blatant transgression of the Constitution there must be consequences and the law must take its course. It is also found that the series of afore-noted acts right from the rejection of resolution by the Deputy Speaker till the dissolution of National Assembly by the President were not performed in the ordinary course of business but the same were result of premeditation and deliberations in order to defeat the resolution of vote of no confidence while playing fraud on the Constitution. To my understanding, Article 5 of the Constitution, which mandates "obedience to the Constitution," was cited to violate the Constitution. However, whether the stated acts attract Article 6 of the Constitution is also left open to be determined by the Parliamentarians as to whether they leave open the doors for such unconstitutional acts or take suitable measures to stop such like mess in future.

13. Above are the reasons of our short order supra, which is reproduced hereunder for facility of reference:

> *"For detailed reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, these matters are disposed of in the following terms:*
>
> *1. The ruling of the Deputy Speaker of the National Assembly ("Assembly") given on the floor of the House on 03.04.2022 ("Ruling") in relation to the resolution for a vote of no-confidence against the Prime Minister under Article 95 of the Constitution ("Resolution") (for which notice had been given by the requisite number of members of the Assembly on 08.03.2022, and in relation to which leave was granted to move the Resolution on 28.03.2022), and the detailed reasons for the Ruling (released subsequently and concurred with by the Speaker) are declared to be contrary to the Constitution and the law and of no legal effect, and the same are hereby set aside.*
>
> *2. In consequence of the foregoing, it is declared that the Resolution was pending and subsisting at all times and continues to so remain pending and subsisting.*
>
> *3. In consequence of the foregoing, it is declared that at all material times the Prime Minister was under the bar imposed by the Explanation to clause (1) of Article 58 of the Constitution and continues to remain so restricted. He could not therefore have at any time advised the President to dissolve the Assembly as contemplated by clause (1) of Article 58.*
>
> *4. In consequence of the foregoing, it is declared that the advice tendered by the Prime Minister on or about 03.04.2022 to the President to dissolve the Assembly was contrary to the Constitution and of no legal effect.*
>
> *5. In consequence of the foregoing, it is declared that the Order of the President issued on or about 03.04.2022 dissolving the Assembly was contrary to the Constitution and of no legal effect, and it is hereby set aside. It is further declared that the Assembly was in existence at all times, and continues to remain and be so.*
>
> *6. In consequence of the foregoing, it is declared that all actions, acts or proceedings initiated, done or taken by reason of, or to give effect to, the aforementioned Order of the President and/or for purposes of holding a General Election to elect a new Assembly, including but not limited to the appointment of a care-taker Prime Minister and Cabinet are of no legal effect and are hereby quashed.*
>
> *7. In consequence of the foregoing, it is declared that the Prime Minister and Federal Ministers, Ministers of State, Advisers, etc stand restored to their respective offices as on 03.04.2022.*
>
> *8. It is declared that the Assembly was at all times, and continues to remain, in session as summoned by the Speaker on 20.03.2022 for 25.03.2022 ("Session"), on the requisition moved by the requisite number of members of*

the Assembly on 08.03.2022 in terms of clause (3) of Article 54 of the Constitution. Any prorogation of the Assembly by the Speaker prior to its dissolution in terms as stated above is declared to be of no legal effect and is set aside.

9. The Speaker is under a duty to summon and hold a sitting of the Assembly in the present Session, and shall do so immediately and in any case not later than 10:30 a.m. on Saturday 09.04.2022, to conduct the business of the House as per the Orders of the Day that had been issued for 03.04.2022 and in terms as stated in, and required by, Article 95 of the Constitution read with Rule 37 of the Rules of Procedure and Conduct of Business in the National Assembly Rules, 2007 ("Rules").

10. The Speaker shall not, in exercise of his powers under clause (3) Article 54 of the Constitution, prorogue the Assembly and bring the Session to an end, except as follows:

a. *If the Resolution is not passed by the requisite majority (i.e., the no-confidence resolution is defeated), then at any time thereafter;*

b. *If the Resolution is passed by the requisite majority (i.e., the no-confidence resolution is successful), then at any time once a Prime Minister is elected in terms of Article 91 of the Constitution read with Rule 32 of the Rules and enters upon his office.*

11. If the Resolution is passed by the requisite majority (i.e., the no-confidence resolution is successful) then the Assembly shall forthwith, and in its present Session, proceed to elect a Prime Minister in terms of Article 91 of the Constitution read with Rule 32 of the Rules and all other enabling provisions and powers in this behalf and the Speaker and all other persons, including the Federal Government, are under a duty to ensure that the orders and directions hereby given are speedily complied with and given effect to.

12. The assurance given by the learned Attorney General on behalf of the Federal Government in C.P. 2/2022 on 21.03.2022 and incorporated in the order made in that matter on the said date shall apply as the order of the Court: the Federal Government shall not in any manner hinder or obstruct, or interfere with, any members of the National Assembly who wish to attend the session summoned as above, and to participate in, and cast their votes, on the no confidence resolution. It is further directed that this order of the Court shall apply both in relation to the voting on the Resolution and (if such be the case) in relation to the election of a Prime Minister thereafter. It is however clarified that nothing in this Short Order shall affect the operation of Article 63A of the Constitution and consequences thereof in relation to any member of the Assembly if he votes on the Resolution or (if such be the case) the election of a Prime Minister thereafter in such manner as is tantamount to his defection from the political party to which he belongs within the meaning of the said Article.

13. The order of the Court made in S.M.C. 1/2022 on 03.04.2022 to the following effect, i.e., "Any order by the Prime Minister and the President shall be subject to the order of this Court" shall continue to be operative and remain in the field, subject to this amplification that it shall apply also to the Speaker till the aforesaid actions are completed."

Sd/-
(Mazhar Alam Khan Miankhel)
Judge

Approved for reporting.

Jamal Khan Mandokhail, J.-I have had the privilege and advantage of going through the judgment authored by the Hon'ble Chief Justice. Although, I fully subscribe to the observations made and conclusions drawn in the judgment, however, I deem it appropriate to add up my opinion as well in this matter of utmost significance.

The Constitution of the Islamic Republic of Pakistan 1973 (the Constitution)

2. Constitution is the supreme, fundamental and paramount law of the land. It serves the common interest of all citizens and guarantees their basic rights. It establishes the mechanics of how the nation is to be operated. It prescribes branches of the government, consisting of Legislature, Executive and Judiciary and determines their respective responsibilities, objectives and fundamental values; sets certain boundaries regarding the exercise and performance of their respective powers and duties. It embodies the rules of political and sets out, how the Members of the Parliament will be chosen, assigning their respective roles. The Constitution forbids the Government and the Parliament from making laws that abridge any of its provisions and injunctions of Islam. The Constitution limits the power of all organs of the State so that no organ of the State should exercise power beyond those listed. It is, therefore, binding upon every citizen including Legislature, Executive and Judiciary, to prevent tyranny and promote the **Rule of Law**. The constitutional supremacy requires that the obligations imposed by it must be fulfilled. It is for this reason Article 5(2) of the Constitution requires that "obedience to the Constitution and law is the [inviolable] obligation of every citizen wherever he may be and of every other person for the time being within Pakistan."

The Rule of Law

3. The rule of law is a concept that all citizens and every organ of the State know and obey the Constitution and law, to ensure their accountability. The Rule of law can serve as a safeguard against tyranny and ensures that all people, irrespective of their status, race, culture or religion should be dealt with equally and in accordance with law. The Greek philosophers Plato, Aristotle and Socrates explored and developed ideas

about government and politics. According to them, the ***Rule of Law*** is the principle that no one is exempt from the law, even those who are in a position of power. In his book ***'The Republic',*** *Plato* called the law "an external authority" that functions at the "allay of the whole city". He in his last book namely *Laws, stated that,*

> *"Where the law is subject to some authority and has none of its own, the collapse of the State, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a State."*

Aristotle also worked on the subject of tyranny and the rule of law. He believed that "tyranny is the very reversed of a constitution". According to him "where the laws have no authority, there is no constitution" and that "the rule of law…is preferable to that of any individual. This is because individuals possess flaws and could tailor government to their own individual interest, whereas the rule of law is objective." He also stated that, *"[He] who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion prevents the minds of rulers, even when they are the best of men. The law is reason unaffected by desire."* He stressed that a ruler must be "the servant of the laws", because "law is order, and good law is good order". According to Socrates, when a citizen chooses to live in a State he "has entered into an implied contract that he will do as….{the laws} command him."

The Supreme Court and its power of Judicial Review

4. According to the Constitution, Supreme Court is the apex organ of the judiciary, which administers justice between private persons or institutions, or between person and State. It keeps the Constitution alive in two ways. First, it interprets the Constitution. Second, the Supreme Court is required by the Constitution to check the other branches of the State to ensure the principle of accountability that they act within the law and fulfill their constitutional obligations, in order to prevent tyranny, corruption, despotism and infringement of the basic fundamental rights of citizens. It decides whether any legislation made by the Parliament, a Provincial

Assembly, or any decision made by a Government or a person holding a public office, violates the Constitution or fails to fulfill their constitutional obligations. The Constitution provides the power of checks and balances to the constitutional Courts to ensure accountability and the rule of law. Thus, the Supreme Court has the role to police the constitutional compliance of the Executive and the Legislature, to make sure that it is the Constitution and law, not the people who run the Parliament, a Government or a local body. Hence, any infringement of a constitutional provision or law by them is an invitation for the intervention of the Courts, if they are called upon to do so. This power of the Court is termed "Judicial Review".

Immunity to the proceedings in the [Majlis-e-Shoora (Parliament)]

5. The constitutionality of the ruling of the Deputy Speaker has been questioned through these petitions, in addition to the *suo moto* notice issued by this Court. The respondents raised an objection that since the ruling of the Speaker comes within the ambit of internal affairs and procedure of the Assembly, which has a constitutional immunity, therefore, the Courts are not permitted to take notice of it. In addition to what has already been discussed by the Hon'ble Chief Justice in the main judgment, I deem it necessary to add further in this behalf. The National Assembly is a creation of the Constitution. It promulgated the Rules of Procedure and Conduct of Business, 2007 (**the Rules of Business**), prescribing the powers and duties of the Speaker, the Deputy Speaker, Members of the Parliament and Committees regarding procedure for conducting business in the National Assembly. Article 69 of the Constitution provides that "validity of any proceedings in [Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure." The said Article of the Constitution recognizes smooth functioning of the Parliament, without interference of Courts only on the ground of any **procedural irregularity**, to ensure its procedural independence. Procedure is an established or official way of doing something, including efficiency and policy. The constitutional immunity of a judicial review is with reference to a particular method for regulating and conducting business and maintaining order in the Parliament by its members, including the Speaker and officers in whom powers are

vested by or under the Constitution, any law or the rules. This constitutional prohibition, in clear terms, is in respect of mere exercise of power that relates and confines to regulating procedure for conduct of business or for maintaining order in the Parliament. There is, however, no prohibition to challenge the constitutional violation and statutory illegality committed by the members of the Parliament.

Judicial Review

6. The intent of the constitution framers is to maintain sovereignty, supremacy and independence of the Parliament, as far as procedure for their internal affairs and maintaining order in the Parliament provided by the Rules of Business is concerned. However, the Constitution made it obligatory that all branches of the State, including the Parliament must act in accordance with the Constitution and the obligations imposed by it must be fulfilled. In case of violation of any provision of the Constitution or law by the Speaker or members of the Parliament during the performance of their duties, the Constitution does not provide immunity. The Constitution provides the power of checks and balances to the constitutional courts, to ensure accountability and to maintain the rule of law in respect of authorities, performing constitutional or statutory duty, therefore, the Court having jurisdiction can exercise its power of judicial review to protect the constitutional provisions. Hence, violation of the constitutional mandates, *mala fides*, non-compliance with the rules of natural justice and perversity by the Speaker or members of the Parliament do not cover within the ambit of Article 69 of the Constitution. On the issue of the scope of judicial review, the Supreme Court of India in the case of ***Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha & Ors.***[1] held that "*procedural irregularity" stands in stark contrast to "substantive illegality" which cannot be found included in the former.* In Para 366 of the judgment, the Indian Supreme Court further held that "*the proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial*

[1] 2007 3 SCC 184

review". It was held that this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution.

Similarly, in the case of *British jurisdiction R v. Inland Revenue Comrs, Ex p National Federation of Self-Employed and Small Businesses Ltd*[2], Lord Diplock said:

> *"It is not, in my view, a sufficient answer to say that judicial review of the actions of offices or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions.* ***They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge."***
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> *(Emphasis supplied)*

The Constitutional Court of South Africa in the case of *Hugh Glenister v. President of the Republic of South Africa*[3] observed as under:

> *"[33] In our constitutional democracy, the courts are the ultimate guardians of the Constitution. They not only have the right to intervene in order to prevent the violation of the Constitution, they also have the duty to do so. It is in the performance of this role that courts are more likely to confront the question of whether to venture into the domain of other branches of government and the extent of such intervention.* ***It is a necessary component of the doctrine of separation of powers that courts have a constitutional obligation to ensure that the exercise of power by other branches of government occurs within constitutional bounds. But even in these circumstances, courts must observe the limits of their powers."***
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> *(Emphasis supplied)*

The Speaker's Authority and the Constitutional Immunity

7. In the parliamentary form of government, Speaker is the Presiding Officer, custodian and representative of the National Assembly.

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[2] 1982 AC 617, 644
[3] [2011]ZACC6

Before assuming office, he takes oath to preserve, protect and to be obedient to the Constitution; to act impartially and with authority vested in him by the Constitution. The Speaker's role in the House is to maintain order, conduct business by applying the provisions of the Constitution, law and the Rules of Business. His decisions as regards the procedural conduct of business are immune from judicial review. But in case of constitutional and legal violation or disobedience, does the Speaker enjoy the immunity and under such circumstances, do the parliamentary privileges exclude the Courts from judicial intervention? The Constitution does not permit any person to substitute his own judgment and authority over the constitutional provisions, therefore, in every organ of the State, there must be a supremacy of the Constitution and law, not of men. Without rule of law, it will be damaging for democracy. In the constitutional structure, the will of the Speaker cannot constitute a legal basis for abrogating the requirement of the Constitution. In our democratic form of Parliament, when the procedural limits are crossed by the Speaker, the Parliamentarians or the officers of the Parliament for that matter, it is only the Parliament to judge its legality. But, when there is infringement, disobedience or violation of the constitutional provisions or statute by the Speaker, the Parliamentarians or the officers, they do not enjoy the immunity, as such, the constitutional court cannot be excluded from its power of judicial review. If the Speaker's power and actions remain unchecked, he will be a man of unlimited powers, and the National Assembly will be subservient to him. There will always be a threat to the sovereignty, authority and dignity of the National Assembly and its values could be undermined. In the case of *Nipamacha Singh and Ors. Vs. Secretary, Manipur Legislative Assembly*[4]*,* the Indian Supreme Court has held that the members of the Legislative Assembly had the constitutional right to move a motion for removal of the Speaker from his office therefore, the Speaker has no power to reject the motion. According to the said verdict, the Speaker has since exceeded his power and authority by denying the constitutional rights of the members of the Legislative

[4] AIR 2002 Gauhati 7

Assembly, therefore, his action is not protected by the Constitution from challenge before the Court.

Resolution for a vote of no confidence

8. In our democratic system, there are two kinds of resolutions i.e. statutory resolution and non-statutory resolution. The resolutions which are mentioned in the Constitution or any Act of the Parliament are called statutory resolutions and the rest are called non-statutory resolutions. Article 95 of the Constitution provides a right to members of the National Assembly to move a resolution for a vote of no confidence (the resolution) against the Prime Minister (**the P.M.**), which is called a statutory resolution. The said Article of the Constitution in itself is a complete code, which specifically provides a procedure to process and to decide the fate of the resolution within the period specified in this Article. Compliance with the constitutional command is an inviolable obligation of the Speaker, as mandated by Article 5(2) of the Constitution. The moment a resolution against a P.M. is moved, the Speaker is obliged to complete the process, as provided by Article 95 of the Constitution and Rule 37 of the Rules of Business. It is for the members of the National Assembly to vote for or against the resolution. After voting, the only power of the Speaker is to count the votes and on the basis whereof, the fate of the resolution shall be decided. According to Article 19 of the Constitution, every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence. The Parliamentarians have their fundamental right of expression and such right shall be exercised by way of vote. The election of Prime Minister is also on the basis of voting and till the time, he enjoys the confidence of the members of the Parliament, he remains the P.M. In case, he loses the confidence of the majority of total membership of the National Assembly, Article 95 of the Constitution has provided a procedure for moving a resolution and decision thereon by the expression so expressed by the

members of the National Assembly. The only power of the Speaker in such a situation is to supervise the Session, to count the votes and to decide the result of the votes so cast in favour of the resolution. In case, the majority of the members votes in favour of the resolution, the P.M. shall cease to hold office. An exercise of power by the Speaker, beyond the constitutional mandate, is described as an act, *ultra vires* the Constitution. While conducting the business of the Parliament, the Speaker and the members must obey and follow the dictates of the Constitution and law to ensure minimum intervention of the Courts. This is the only way by which the parliamentary sovereignty, supremacy, authority and dignity can be maintained.

The Resolution for the vote of no confidence moved against Prime Minister

9. Facts of the case in hand have already been narrated in detail by the Hon'ble Chief Justice in the main judgment, therefore, there is no need to describe the same.

10. However, it is to be noted that the Deputy Speaker rejected the resolution and his ruling was based upon a cipher, issued by a Pakistani Diplomat, allegedly containing some allegations. He while giving reference of the provision of Article 5(1) of the Constitution declared that the motion is a result of a plot hatched by its movers in connivance with a foreign country to change the regime. It is strange to note that the Deputy Speaker did not explain that how the said Article is relevant in the process of vote of no confidence. Article 95 of the Constitution does not permit the Speaker to do any business, other than completing the process upon the resolution. He was obliged to be obedient to the Constitution and law, therefore, was bound to fulfill the constitutional command by finalizing the process for a vote of no confidence moved against the P.M. in accordance with Article 95 of the Constitution and Rule 37 of the Rules of Business. He was supposed to abide by his oath to be impartial and act fairly. But instead, he has violated the constitutional provisions and has misused his power, in protecting the interest of the P.M. as both of them belong to the same ruling party. The conduct of the Deputy Speaker is evident of the fact that he had already decided to reject the resolution, through the ruling, which was

drafted before the start of the proceedings in the House. The ruling was with the name and designation of the Speaker National Assembly, Asad Qaiser, who was even not present in the House. The ruling of the Deputy Speaker is evident of the fact that it was pre-planned, which has deprived the Parliamentarians of their constitutional right for a vote of no confidence against the P.M. The Deputy Speaker did not provide the right to reply the allegations leveled by the Federal Minister for Law and Parliamentary Affairs, which undermined the authority and sovereignty of the Parliament, and has lowered its dignity as well. His act was, therefore, not only beyond the mandate of the Constitution, but is also based on *mala fide,* which cannot be termed as **procedural irregularity**, rather it was an act, *ultra vires* the Constitution. In the given circumstances, judicial review of the ruling by this Court cannot constitute a breach of the privilege of the Parliament, in terms of Article 69 of the Constitution. Keeping in view such an unconstitutional act committed by the Deputy Speaker, this Court having the power to guard the constitutional provisions and to ensure supremacy and implementation of the Constitution and law, took a *suo moto* notice in order to avoid tyranny and mockery of law.

The issue of Cipher

11. So far as the cipher is concerned, in addition to what has been dilated upon by the Hon'ble Chief justice in the main judgment, it is further to be noted that by the time the ruling was delivered by the Deputy Speaker, he did not go through its contents, as it remained coded. The ruling contained that the cipher requires a thorough probe and investigation to unearth the truth with regard to the allegations contained in it. We are surprised that without going through the contents of the cipher, how did the Deputy Speaker come to know that there was some conspiracy and by whom? Admittedly, the Ministry of Foreign Affairs had received the cipher much before the resolution was moved. If it is believed for the sake of argument that there was any allegation of conspiracy against any member of the Parliament, the proper course provided by law could have been adopted by the Government, but no step in this regard was taken. Even if the cipher has any substance, as alleged by the Deputy Speaker, still it

cannot be made basis for rejection of the resolution. As it is the mandate of the Constitution that the Speaker/Deputy Speaker must complete the process upon the resolution against the P.M. within the prescribed period of time, but the needful was not done. The ruling of the Speaker, rejecting the resolution on the basis of the allegations allegedly contained in the cipher, was biased and without jurisdiction, hence it is *ultra vires* the Constitution. After passing short order by this Court, the nation had witnessed that instead of following the mandate of the Constitution and directions of this Court, the Speaker had prolonged the proceedings of the National Assembly in order to frustrate the constitutional and democratic process. Such an unconstitutional and undemocratic behavior was unbecoming for a person holding one of the most prestigious constitutional offices.

The Doctrine of Necessity

12. The learned Attorney General though conceded that he cannot defend the ruling of the Deputy Speaker, however, stated that the President of Pakistan, has dissolved the National Assembly on the recommendation of the P.M. and has asked the Election Commission of Pakistan to conduct elections. According to him, since the nation is prepared and ready for the general elections, therefore, let the electorate to elect members of its choice afresh. The Constitution provides two instances for conducting elections. First, the elections shall be called upon completion of the term of the Assembly. Secondly, upon the recommendation of the P.M., the President can dissolve the National Assembly before completion of its term and call fresh elections. However, Explanation to Article 58(1) of the Constitution provides that in case a notice of a resolution for vote of no confidence has been issued against the P.M., he loses the authority to recommend to the President, the dissolution of the Assembly. In the case in hand, the moment, the Deputy Speaker rejected the resolution, the P.M. recommended dissolution of the Assembly, which was acted upon by the President. Since through our short order, we had declared the ruling of the Deputy Speaker *ultra vires* the Constitution, therefore, the proceedings upon the resolution in the National Assembly revived to its previous

position. Under such circumstances, the P.M. had no authority to recommend the dissolution of the National Assembly, consequently, the notification of the President based upon unauthorized recommendation of the P.M. has no legal authority. As the notification issued by the President is no more in field, therefore, we have no jurisdiction to order for conducting fresh elections. However, the request of the learned A.G. is based upon the doctrine of necessity. The doctrine of necessity is a term to justify the extra-constitutional or unlawful course of conduct or action by the State through the constitutionally formed government to run the affairs of the State, but a question arises that under what circumstance and by whom, such power is to be exercised? ***The Supreme Court of Cyprus in the case of The Attorney-General of the Republic v. Mustafa Ibrahim and Others***[5] has held that, *"the legal doctrine of necessity is in reality the acceptance of necessity as a source of authority for acting in a manner not regulated by law but require, in prevailing circumstances, by the supreme public interest, for the salvation of the State and its people."* According to the said judgment, the prerequisites for the application of doctrine of necessity are *(a) an imperative and unavoidable need or exceptional threat against the existence of the State; (b) no other alternative or remedy; (c) the proportionality of the action adopted as to the exceptional situation; and the temporary character of the measures and its duration strictly for no longer than the emergency exists.* Thus, the right to exercise the doctrine can be invoked rarely and very narrowly, only by a constitutionally formed government in exceptional and unavoidable circumstances, when no other alternative or remedy is available. For instance, in a full-scale war, an insurrection, an economic depression, national disasters beyond human control or a threat against the existence of the State. While exercising such authority, the government must act fairly, without bias and prejudice, to ensure public confidence in it.

13. There must be an effective system of checks and balances upon the use of such doctrine to avoid its misuse and to ensure the functional continuity of the State. The Constitution has assigned the power

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[5][1964] Cyprus Law Reports 195

of judicial review to the Courts to consider the legitimacy of every action of the government including the right of exercising the power of the doctrine of necessity. In exercising the power of judicial review, the courts are always reluctant to recognize the government's power of doctrine of necessity. The courts should enquire into the use of such an extraordinary measure and must also consider its necessity on the touchstone of fundamental political, social and legal values, and jurisdiction of the authority exercising such power.

14. In the instant case, rejection of the resolution of no confidence by the Deputy Speaker enabled the P.M. to recommend dissolution of the National Assembly. The President accepted the recommendation, in consequence whereof, the National Assembly was dissolved and the elections were called. Once we had declared the act of the Deputy Speaker as extra-constitutional by setting aside his ruling, the resolution of no confidence was revived, as a result whereof, the entire structure built upon the ruling collapses and the National Assembly stands restored. The request of the learned A.G. for continuing with the process of elections can in no way be considered as an instance for invoking the right of doctrine of necessity. The action of the Deputy Speaker was biased, on the basis whereof, if permitted to hold fresh elections, it would amount to giving license to an authority to misuse the extraordinary power of doctrine of necessity. This country has already experienced misuse of doctrine of necessity by the hands of unconstitutional forces time and again, which were legitimized by this Court, but it did not achieve the desired results. Rather, the democracy has suffered a lot because of misuse of the doctrine of necessity. The Courts must discourage every action, which is contrary to the Constitution and democratic norms. There was no extraordinary situation in the country nor was there any threat to the existence of the State. There was no occasion to call for fresh elections on the wishes of any person, nor the situation was so worse to ask us to exercise the power of doctrine of necessity. We cannot assume the role of the Parliament or the elected Prime Minister, rather it should be exercised on the collective wisdom of the Parliament. However, if there is no possibility of smooth functioning of the National Assembly in the regime of new government, still

the newly elected Prime Minister has the power under the Constitution to recommend to the President for dissolution of the Assembly. In presence of an adequate and proper remedy provided by the Constitution, there is no question of exercise the power on the touchstone of doctrine of necessity. Ensuring compliance of the Constitution and maintaining the rule of law will certainly eliminate the need of use of power of the doctrine of necessity. Let the Constitution and the law be followed in letter and spirit to safeguard the fundamental rights of the citizens, to promote the democracy in order to achieve the goal of stable and prosperous country.

Sd/-
(**Jamal Khan Mandokhail**)
Judge

Islamabad
K.Anees
APPROVED FOR REPORTING